

Non-Supervisory Staff Promotions to Senior Positions to Sr. (GS-14/15) Levels

- A. This section describes the procedures used to promote non-supervisory employees to senior positions (Senior Levels GS-14/15). This procedure does not limit promotions by any other selection process.
- B. Definitions
1. Candidate: A candidate is an EPA bargaining unit employee who submits a Promotion Package in response to a solicitation for applications for non-supervisory employees to Senior Positions at the GS-14/15 level.
 2. Promotion Package: The Promotion Package is prepared by the candidate and the first line supervisor. The Promotion Package contains all the information and supporting documentation required by the solicitation for non-supervisory employees to Senior Positions (Senior Levels GS-14/15).
 3. Panel: The Panel consist of six members:
 - a. The Chair is an EPA supervisor from the Division of the candidate, who is not the candidate's first- or second-line supervisor.
 - b. Two bargaining unit employees
 - i. one BUE from the Division of the candidate¹ who is at an equal or higher grade level of the candidate and
 - ii. One BUE from the candidate's Division, or the corresponding Division in another Region, or the corresponding EPA HQ program office who is at an equal or higher grade level of the candidate.
 - c. An Agency employee from the corresponding EPA Headquarters program office who is at an equal or higher grade level of the candidate.
 - d. Two Outside Panel members. An Outside Panel member is a non-EPA employee who holds institutional responsibility or academic rank at least equal to the candidate's proposed new level. Typically, this person will be from a federal or state agency or academic institution. Non-federal employees may be paid an honorarium for their service.
 4. Panel Coordinator: The Panel Coordinator is not a Panel Member (no vote). The Panel Coordinator provides administrative support to the Panel and attends all Panel meetings. The Panel Coordinator is normally the lead LER analyst serving the division where the candidate's promotion package originates.
 5. Letters of Reference: Letters obtained from EPA supervisors and employees, as well as non-EPA employees who hold institutional responsibility or academic rank at least equal to the candidate's proposed new level. EPA employees who supply references must be at an equal or higher grade level of the candidate.
 6. Conflict of interest: All panel members will be asked to confirm in writing there is no conflict of interest with the candidate. Each panel member will be required to submit a written statement affirmatively stating that no conflict of interest exists to the Panel Coordinator.

¹ If this panel position cannot be filled by an EPA employee from the candidate's division, an employee from another region in the same type of division can be fill this panel position.

C. Roles and Responsibilities

1. First Line Supervisors are responsible for:
 - a. Determining whether an employee has the potential to qualify for career advancement under this section.
 - b. Writing a letter of recommendation in support of the employee's candidacy for promotion.
 - c. Assisting the candidate in developing a promotion package.
 - d. Assisting the candidate in identify ten references.
 - e. Participating, if requested, in an interview with the Panel Chair to clarify or elaborate on information contained in the promotion package.
2. Second-line Supervisors are responsible for:
 - a. Approving or disapproving a candidate's promotion package and requesting clarification or elaboration of information in the promotion package from the first line supervisor if needed.
 - i. A disapproval of a candidate will be in writing and will include the reason(s) for disapproval and notice to the candidate of the right to file a position classification appeal.
 - b. Selecting three panel members from the list of ten persons in the Promotion Package.
 - c. Selecting three others from the list of ten persons who will prepare letters of recommendation and submit them to the Panel Coordinator.
 - d. Informing the candidate of the Panel decision.
3. Division Directors are responsible for:
 - a. Making the final decision to recommend or not recommend the candidate for promotion.
 - b. Communicating the Panel recommendation to the second line supervisor.
 - c. Communicating concurrence to the Shared Services Center.
4. The Panel Chair is responsible for:
 - a. Convening the Panel to review and make a recommendation of the candidate.
 - b. Preparing a report for the Division Director of the Panel's findings and recommendation within seven days of the Panel review.
5. The Panel Members are responsible for:
 - a. Conducting a peer review process in an objective manner
 - b. Discussing a candidate's Promotion Package at Panel Meetings
 - c. Attending and participating in all Panel Meetings.
6. The Shared Service Center is responsible for:
 - a. Providing advice and guidance to Division Directors and supervisors regarding classification of the new position throughout the application and review process.
 - b. Responding in a timely manner to inquiries from the convened Panel.

- c. Receiving the final recommendation from the Division Director.
 - d. Completing the process of classifying the position to determine the appropriate grade.
7. The Panel Coordinator, normally the lead LER analyst is responsible for:
- a. Performing the administrative functions associated with the selection process, such as scheduling meetings, assisting the first line supervisor in preparation of a new position description, and gathering conflict of interest forms and letters of reference submitted in accordance with the procedure described below.
8. The Shared Services Center Classifier is responsible for the final classification of the position.

D. Procedure

1. Twice each calendar year, in the third week of January and the third week of June, an announcement will be issued from the Shared Services Center soliciting applications for Senior Positions (GS-14/15) Levels. If the selection process from a specific solicitation for applications does not result in any promotions, management will issue to the Union a written explanation explaining why there were no selections.
2. The solicitation will contain all the requirements for the position, the position evaluation guidelines, and other pre-requisites such as time in grade requirements.
3. Potential candidates will submit a letter of intent detailing their qualifications for the position to their First Line Supervisor.
4. The First Line Supervisor will either:
 - a. write a recommendation responding to specific points raised in the position evaluation guidelines and provide a detailed description of the candidate's proposed new position responsibilities as part of the Promotion Package or
 - b. decline to provide a recommendation in writing to the employee.
5. The Second-Line Supervisor reviews the Promotion Package and either concurs with the recommendation for Panel Review or contacts the first-line supervisor for further discussion. If the Second-Line Supervisor decides to deny the candidates' application, the second-line supervisor will inform the candidate of their decision in writing and inform the candidate of their right to file a position classification appeal with either the Agency or OPM. If the Second-Line Supervisor concurs with the promotion package, the Second-Line Supervisor will inform the Panel Coordinator of their concurrence.
6. The Panel Chair with the assistance of the Panel Coordinator, will convene the Panel. Panel Meetings may be in-person, virtual, or hybrid. The Panel will use the OPM classification scoring guidelines supplied by the Shared Services Center. After careful review and discussion of the candidate's qualifications described in the Promotion Package, the Panel will vote to approve or disapprove the candidate's application by secret ballot via email to the Panel Coordinator. A finding that the candidate meets the criteria for a GS-14 or GS-15 is made only after five of the six Panelists have voted in the affirmative. No abstentions are permitted.

7. After the Panel has met and voted, the Panel Chair will prepare a written summary report and provide this to the Division Director for their review. The Division Director will direct any questions they have about the Panel Chair's report to the Panel Chair. When the Division Director has completed their review, the Division Director will communicate their final decision to the Panel Coordinator. If the final decision is to recommend the candidate be promoted, the final report will be forwarded to the Shared Services Center Classifier. The Shared Services Center Classifier is responsible for the final classification of the position. Once the classification is complete, the candidate will be notified of the effective date.
8. If the Division Director decides to not recommend the candidate for promotion, the second line supervisor will supply a copy of the summary report to the candidate and will discuss the findings and provide recommendations to the candidate on a path forward. The candidate may reapply when a future solicitation is announced.

Employee Rights

Section I. Right to Union Membership

- A. Pursuant to 5 U.S.C. Section 7102, each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.
- B. Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

Section II. Right to Private Lives

- A. Subject to applicable law, rule, regulation, and Agency policy employees have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without harassment or bullying (as defined by Order 4711) by the Agency so long as such activities do not conflict with job responsibilities.
- B. Generally, managers are expected to keep confidential the basis for which leave is requested and/or used. Employee information shared with managers for which the employee has requested confidentiality will be kept in confidence and only shared with individuals with a "need to know."
- C. The Right to Private Lives includes but is not limited to the following:
 - 1. Employees generally have a 1st Amendment Right to Freedom of expression on social media platforms while not on duty time or Agency equipment so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties.
 - 2. Unless there is a reasonable basis that there is off duty conduct impacting the efficiency of the service, the Agency and its representatives will not monitor a bargaining unit employee's activity while the employee is not on duty time or Agency equipment.
 - 3. In their private lives employees generally have a freedom of association, right to protest and/or march so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties.
 - 4. Supervisors may request electronic monitoring such as PIV entrance/exit time frames or log-in/log-out time frames with a written justification to and concurrence from the applicable PMO/HRO.
 - 5. The Agency may, at its discretion, inspect packages, briefcases and other containers in

Commented [CR1]: Agency

Agency has moved towards the union in several ways with new language:

Agency went close to Union's original "reasonable cause" language, but changed to "reasonable basis" to differentiate it from the criminal legal standard

Agreed to take out "electronically," which widens the possible modes of monitoring

Took out "direct any employee," which could have been used as a loophole by managerial employees to monitor employees without a reasonable basis

However, Agency is wary anything further could be problematic under 7106(a)(2)(A) – from Cyberfeds –

"Management's right to discipline employees under section 7106(a)(2)(A) of the Statute includes the right to investigate to determine whether discipline is justified. See, e.g., Portsmouth Federal Employees Metal Trades Council and Portsmouth Naval Shipyard, 34 FLRA 1150, 1156-58 (1990), quoting National Federation of Federal Employees v FLRA, 801 F.2d 477, 480 (D.C. Cir. 1986). Proposals that limit an agency's use of an appropriate investigative technique to uncover conduct subject to disciplinary actions directly interfere with management's right to discipline. See, e.g., National Association of Government Employees, Local R5-82 and U.S. Department of the Navy, Navy Exchange, Naval Air Station, Jacksonville, Florida, 43 FLRA 25, 30-31 (1991) (Naval Air Station, Jacksonville)." "

We also want to be on the same page – that monitoring does not include occasional observance of publicly posted information on social media. **AFGE's position is that this addresses incidental situations...does the Agency agree?**

The agency agrees this language would cover both management employees as well as contractors, though it would not cover OIG (there is case law on this)

Formatted: Indent: Left: 0

the immediate possession of employees arriving on, working at, visiting, or departing from Federal property.

6. Except for limited circumstances such as employees who have reached the federal pay cap where a waiver is not permitted or for identified essential personnel during a lapse in appropriations employees will not be required to work for no compensation.

Section III. Merit Systems Principles

As required by 5 U.S.C. 2301(b) (1) through (9), the Agency's personnel management program will be implemented with the following merit system principles *quoted verbatim*:

- A. *Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.*
- B. *All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.*
- C. *Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.*
- D. *All employees should maintain high standards of integrity, conduct, and concern for the public interest.*
- E. *The federal workforce should be used efficiently and effectively.*
- F. *Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.*
- G. *Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.*
- G. *Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.*
- H. *Employees should be—*
 - (1) *protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and*
 - (2) *prohibited from using their official authority or influence for the purpose of interfering*

with or affecting the result of an election or nomination for election.

- I. *Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—*
 1. *a violation of any law, rule, or regulation, or*
 2. *mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.*

Section IV. Prohibited Personnel Practices

The following personnel practices are prohibited pursuant to 5 U.S.C. 2302(b)(1) through (14) and are quoted verbatim:

1. *discriminate for or against any employee or applicant for employment—*
 - a. *on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);*
 - b. *on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);*
 - c. *on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));*
 - d. *on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or*
 - e. *on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;*
2. *solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—*
 - a. *an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or*
 - b. *an evaluation of the character, loyalty, or suitability of such individual;*
3. *coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;*
4. *deceive or willfully obstruct any person with respect to such person's right to compete for employment;*
5. *influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;*

6. *grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;*
7. *appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;*
8. *take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—*
 - a. *any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—*
 - (i) *any violation of any law, rule, or regulation, or*
 - (ii) *gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;**or*
 - b. *any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—*
 - (i) *any violation (other than a violation of this section) of any law, rule, or regulation, or*
 - (ii) *gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;*
9. *take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—*
 - a. *the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—*
 - (i) *with regard to remedying a violation of paragraph (8); or*
 - (ii) *other than with regard to remedying a violation of paragraph (8);*
 - b. *testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);*
 - c. *cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or*
 - d. *refusing to obey an order that would require the individual to violate a law, rule, or regulation;*

10. *discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;*
11. *(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;*
12. *take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;*
13. *implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or*
14. *access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13). This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.*

Section V. Additional Principles

The Union and the Agency further agree to the following principles:

A. Assign Work and Direct Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to assign work, including determining the method and manner to assign work and direct employees, except as provided by 5 USC 7106(b)(2) and (3) unless otherwise negotiated.

1. The Agency will comply with all laws and Government-wide regulations prohibiting discrimination against employees on the basis of race, color, religion, national origin, sex, union activity, political affiliation, marital status, age, sexual orientation, a qualified person with a disability and genetic information. EPA also will not tolerate harassment of any type. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment.
2. Orders and instructions.
 - a. Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict.
 - b. Employees recognize their responsibility to timely comply with all legal orders and instructions from their supervisors.
 - c. If an employee reasonably believes that an order or instruction violates or is inconsistent with any law, rule, regulation, or Agency policy, they should state their beliefs to their supervisor.
 - d. Supervisors recognize their responsibility to ensure that all orders and instructions are consistent with law, rule, regulation, or Agency policy.
 - e. The employee may document their belief that the order or instruction violated or was inconsistent with one or more laws, rules, regulations, or Agency policies.
 - f. Employees may refuse a specific work assignment if performing the work assignment would violate law, rule, or regulation.
 - g. It is a Prohibited Personnel Practice to take a personnel action against any employee for refusing to obey an order that would require the individual to violate a law, rule, or regulation.
 - h. If an employee follows a supervisor's order(s) or instruction(s) which is not consistent with law, rule, regulation, or Agency policy such employee may raise lack of knowledge as a mitigating factor in response to any proposed discipline

B. Working Conditions: The Union recognizes the Agency's right to assign work.

1. Employees, in the legitimate exercise of their rights and responsibilities as

designated representatives of the Union, will be protected from Agency actions that would constitute unlawful:

- a. interference;
- b. retaliation;
- c. discrimination;
- d. harassment;
- e. restraint; or
- f. coercion.

2. Manager Accountability

- a. In cases where the Council 238 or a local Union president is concerned about a trend of complaints, the Agency agrees to meet with the Union to identify potential corrective measures to address the issue(s). Corrective measures may include, but are not limited to training, 360 reviews, other potential actions.
- C. Service of a Warrant or Subpoena: If an employee is to be served with a warrant or subpoena, to the extent it is within the Agency's control, the service will be done in private without the knowledge of other employees.
- D. Personal Belongings and Agency Equipment: The Agency will continue to make reasonable efforts to provide for the secure storage of personal belongings in existing workspaces. When new furniture is being contemplated as part of a space update, this is a matter appropriate for local negotiation. The Agency is not responsible for personal belongings brought to the workplace by an employee. All furniture and equipment furnished by the Agency for an employee's use in carrying out the employee's duties is the property of the Federal government and may be: (1) recalled by the Agency at any time without notice; and (2) may be searched by the Agency at any time without notice, in compliance with applicable law, rule and regulation. Employee's personal belongings may be searched when reasonable for the circumstances and in compliance with applicable law, rule and regulation.
- E. Resign/Retire: An employee may resign or retire at any time and may set the effective date of their resignation or retirement. An employee may request to withdraw their resignation/retirement at any time before it has become effective. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. An employee will be informed of the reason(s) when a request to withdraw a resignation/retirement is denied. Reasons to deny a request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of a VERA/VISP signified by submitting retirement forms to HR, and the presence of an executed settlement agreement.
- F. When an employee is faced with the prospect of Agency-initiated action such as termination or removal, the employee has the right not to resign or, if the employee

chooses, to make a resignation effective at any time prior to the effective date of the Agency's action.

~~F.G.~~ The employee may designate a representative to attend meetings when the employee is faced with the prospect of an Agency-initiated action such as termination or removal; in such cases where the Union has been designated as the employee's representative, the employee and the Union have the right to review documents relied on to support the reasons for action given in the notice.

~~G.H.~~ Meetings where the employee is faced with the prospect of an Agency-initiated action such as termination or removal, the employee shall have the right to review documents relied on to support the reasons for action given in the notice.

~~H.~~ ~~For meetings where the employee is not represented by the Union when the employee is faced with the prospect of an Agency initiated adverse action (including all suspensions and more severe actions) such as termination or removal, the Union retains has the right to receive the documents demonstrating that the Agency has abided by the procedural requirements of the Discipline and Adverse Action Article of the MCBA by the terms of the contract and any settlement agreement made between the employee and the Agency upon request. Further, the union has the right to receive copies of settlements consistent treatment among employees.~~

~~I.~~
~~I.J.~~ Resignations shall not be secured by unlawfully coercive or deceptive means. The employee may designate a representative for any agreement between the Agency and the employee when the employee is resigning in lieu of Agency initiated action, such as termination or removal.

~~J.~~

K. No Recording Protected Union Activity: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving 5 U.S.C. 7102 protected Union activity.

L. Recording Other Conversations: No recording of any conversation or meeting between a BUE and a management official will be made without mutual consent except for Inspector General Investigations, or other law enforcement investigations. When a transcript is made by the Agency from a recording, except for Inspector General Investigations, or other law enforcement investigations, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the recording and the transcript, if any. Information obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to training sessions and all-hands meetings or otherwise agreed by the parties. Employees will be given notice in the meeting invitation whenever a meeting or training may be recorded.

Formatted: Indent: Left: 0.5 , No bullets or

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0.5 , No bullets or

Formatted: Strikethrough

Commented [OPM2]: AFGE
Union reinserted

Commented [OPM3R2]: FROM UNION RIGHTS:
F Where the Union does not attend a settlement meeting, and the settlement agreement impacts bargaining unit working conditions, (e g , grants, promises, or gives priority consideration for a promotion, reassignment, training, etc) the settlement agreement will contain the following statement: "This settlement agreement is subject to review for compliance with negotiated agreements between the EPA Agency and AFGE. Accordingly, it will be forwarded to the appropriate Local President for a ten (10) day period of consideration. If AFGE alleges the settlement conflicts with any negotiated agreements between the EPA Agency and AFGE, or other non-discretionary requirements, you will be notified

Commented [OPM4R2]: AFGE
Union willing to delete above from Union Rights IF agreement on paragraph I in Employee Rights

Agency suggests moving to Union Rights...all agreed...Will move to Union Rights below paragraph F above as agreed by everyone

Commented [CR5]: Agency:

Agency concerned it doesn't know what is included in the "documents demonstrating the agency abided..." and the Union wants the notice, etc or whatever is required by the contract

Commented [CR6R5]: Agency

On 1/18 agency to continue conversations with the civil rights community to consider this proposal

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Indent: Left: 0.5 , No bullets or

L.M. Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency regulations and policies. and after seeking prior approval of outside activity as required by the Agency's Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency, 5 C.F.R. Part 6401. When prior Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within twenty-one (21) business days, provided the request meets all the regulatory requirements. The Deputy Ethics Official or designee will respond in writing and, if the request is denied, the reason for doing so will be included.

Formatted: Font: (Default) Times New Roman, 12 pt
Font color: Text 1

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt
Font color: Text 1

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt
Font color: Text 1

Section VI. Right to Obtain Information

- A. Right to Voice Concerns: If the employee wishes to discuss a condition of employment, working conditions or potential grievance with a Union representative, the employee shall have the right to contact and meet with their Union representative as reasonable and necessary on official time.
- B. Employees shall also have access to management officials on duty time and in accordance with this Section. Employees have the right to communicate with the following:
 1. A supervisor or management official of a higher rank than the employee's immediate supervisor ;
 2. The Human Resources Office;.
 3. An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment Opportunity Counselor; and
 4. The Financial Management Officer or designee on matters directly affecting the employee.

Section VII. Employee Examinations

- A. If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests Union representation, the employee has the right to Union representation.
- B. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be rescheduled as soon as practicable in order to secure a Union representative.
- C. Weingarten Rights. Agency shall notify employees each year by May 1st of their Weingarten Rights via email. This notice shall include:
 1. A bargaining unit employee has the right to union representation at any

examination of the employee by a representative of the agency in connection with an investigation if:

- i. The employee reasonably believes the examination may result in disciplinary action against the employee; and
- ii. The employee requests representation.

D. If a matter being investigated concerns potential criminal misconduct, warnings (Garrity or Kalkines) will be provided to interviewed employees, as appropriate.

1. Garrity Warning: At the commencement of, or as soon as it might become applicable during the course of, a voluntary investigatory interview, the Agency will provide an employee a warning regarding the employee's constitutional privilege against self-incrimination, which may be invoked when the employee reasonably believes their statements may be used against them in a criminal proceeding. An employee's refusal to respond based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for administrative disciplinary or adverse action. Evidentiary value of an employee's silence may be considered in administrative proceedings as part of the facts surrounding an investigation. Any statement provided by the employee may be used as evidence in criminal and/or administrative proceedings.
2. Kalkines Warning: At the commencement of a compelled investigatory interview, where prosecution has been declined by the appropriate authority, the Agency will provide an employee a warning that the employee's statements concerning the allegations during the interview cannot and will not be used against them in a subsequent criminal proceeding, unless the employee provides false statements or information; in which case, criminal proceedings may be instituted against the employee for falsifications. Refusal to answer or failure to respond truthfully to any questions may result in administrative disciplinary action.

E. When employees are given a Garrity or Kalkines warning by the Agency (excluding the OIG), they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees shall be given a copy of the statement for their records.

When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:

1. Requesting that the interviewer clarify questions;
2. Clarifying responses provided by the employee;
3. Assisting the employee in providing favorable extenuating facts;
4. Suggesting other employees who may have knowledge of relevant facts;
5. Advising and/or conferring privately with the employee during the course of the meeting; and
6. Not unduly disrupting the examination.

Formatted: Indent: Left: 0

At the conclusion of the interview, the Union representative and employee may meet to determine if there are additional facts the employee would like to bring to the interviewer's attention for correction and clarification.

- F. All rights and privileges apply whether the employee examination is in person or virtual or by other means.

Section VIII. Rights

- A. **Whistleblower Rights.** The Agency or the Agency's Office of Inspector General shall annually inform the employees of their rights under the Whistleblower Protection Act, the Dr. Chris Kirkpatrick Whistleblower Protection Act, the U.S. Office of Special Counsel's Reauthorization Act of 2017, and the Follow the Rules Act of 2017 and their rights to be protected from retaliation and prohibited personnel practices.
- B. Whistleblowing is defined as the disclosure of information an employee reasonably believes evidences:
1. A violation of any law, rule or regulation;
 2. Gross mismanagement;
 3. Gross waste of funds;
 4. An abuse of authority;
 5. A substantial and specific danger to public health or safety; or
 6. Censorship related to scientific research if censorship meets one of the above-listed categories.
- C. An employee may choose at any time to go to the Office of Special Counsel (OSC)⁴ or the Agency's Inspector General (IG). Whistleblowers or employees engaging in whistleblowing activity may request Union Representation.

Formatted: Indent: Left: 0

Formatted: Indent: Left: 0

Section IX. Right of Access to Documentation

The Agency will maintain and utilize records covered by the Privacy Act of 1974 in accordance with that law. Employees may review and/or copy the records and/or make comments and recommendations on corrections with regard to the records maintained under the Privacy Act of 1974 as provided for in that law. Employees may request information in accordance with the Privacy Act at [EPA.gov/privacy](https://www.epa.gov/privacy) (or its successor site). In coordination with their supervisor, Employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

Formatted: Indent: Left: 0

Formatted: Font: (Default) Times New Roman, 12 pt

⁴ The OSC is an independent agency protecting federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

Section X. Participation in Voluntary Activities

Employees have the right to participate or decline to participate in voluntary activities publicized by the Agency. The Agency will not require or coerce employees to participate in any way in voluntary activities. Participation or non-participation in itself will not be used to advantage or disadvantage employees.

Section XI. Right to Debt Collection Protection

It is recognized that all employees are expected to pay promptly all just financial obligations. Employee garnishments will be processed in accordance with the provisions of 5 C.F.R. Parts 581 and 582. The Agency agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgment, the Agency will not act as an arbitrator nor will the Agency take any action against the employee which is not directly related to the debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee, or to debts incurred on credit cards issued to the employee for use in Official Government business.

The Agency or payroll provider will initiate debt against the United States collections in accordance with 5 CFR 550.1104(e) and 40 CFR 13.22. The parties recognize that smaller debts to the government (e.g., overpayment of \$50 or less) may not result in a debt letter. The Agency or payroll provider will provide notice in debt letters to the employee of the employee's rights as outlined in appropriate regulation.

Section XII. Right to Proper Payment

The Agency will comply with applicable Government-wide regulations, including 5 C.F.R. 5584 and Agency regulations and policies regarding: the delivery of employee pay; overpayments; waiver of overpayment and underpayments. When an employee becomes aware of an overpayment, it is the responsibility of that employee to notify the Agency of the overpayment immediately. If an employee notifies the Agency that they have been overpaid, the Agency or payroll provider will provide the employee a debt letter explaining to the affected employee the circumstances of the overpayment and will explain the process for completing a Request for Waiver of Claim for Erroneous Payment. The parties recognize that smaller debts to the government (e.g., overpayment of \$50 or less) may not result in a debt letter. The Agency agrees that employees are entitled to their proper pay or reimbursement at the proper time in the proper amount.

In the case of overpayment or underpayment of net pay due to the error of the Agency, the Agency will expeditiously correct the overpayment, and in the case of underpayment, reimburse the employee any interest and penalties incurred by the employee as a result of the overpayment, to the extent authorized by law, rule and regulation.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Indent: Left: 0

Section XIII. Right to Notice of Benefits

- A. Notices: The Agency will notify employees using electronic messaging systems designed to send individual notification regarding OPM announcements of the following payroll related events:
1. Open season for the Thrift Savings Plan;
 2. Open season for Federal Employee Health Benefits (FEHB);
 3. How to obtain copies of FEHB provider brochures;
 4. Timely notice of discontinued service by an FEHB provider; and
 5. Open season for Federal Group Life Insurance, and
 6. Opportunity to convert from an existing pension system to a new pension system (e.g., CSRS to FERS).
- B. FEHB and Non-Pay Status: The Agency will comply with applicable law and Government-wide regulations regarding the coverage under the FEHB when an employee is in a non-pay status.

Section XIV. Disclosure of Personal Identifiable Information (PII) by the Agency

If an employee's Personal Identifiable Information (PII) is disclosed to an unauthorized party by the Agency or their agent, the Agency will implement appropriate remedial actions in accordance with law, regulation, and Agency policy, including potentially offering the employee identity theft protection.

Section XV. Religious Accommodations

The Agency will not discriminate based on religion as detailed under Title VII of the Civil Rights Act of 1964. The Agency will grant requests for Religious Accommodations for employees with a sincerely held religious belief, practice, or observance upon request, as provided by federal laws and regulations where they do not provide a hardship to the Agency. An employee's religious accommodation will be treated as confidential and shared only with those who have a need to know. If the Decision Maker is not the first line supervisor, the employee will be notified in writing of the identity of the Decision Maker.

Merit Promotion

Section I. Purpose

- A. The Parties will comply with 5 U.S.C. Chapter 23. This article applies only to competitive service bargaining unit positions that the Agency chooses to fill through merit promotion vacancy announcements unless explicitly noted. As required by 5 U.S.C. 2301(b) (1) through (9), the Merit System Principles apply to all bargaining unit employees.

This Article shall be interpreted and applied in a manner consistent with the provisions of the most recent EPA Merit Promotion Plan, Order 3115, as well as with law, rule, and regulations. The Parties agree that changes to Order 3115 will be negotiated to the extent required by law. All procedures and regulations contained in the Agency's Merit Promotion Order 3115 which are not covered in this Article will apply to the extent they are not inconsistent with this Article.

Section II. Coverage. This Program applies to all competitive service AFGE bargaining unit positions. This Article does not cover the Agency's use of interchange agreements. The Agency will follow EPA Order 3115 for interchange agreements.

- A. Competitive Actions. The following placement actions can be taken only by applying the competitive procedures discussed in the Agency's Merit Promotion Order 3115:

1. A permanent promotion or transfer to a higher graded position or to a position with higher promotion potential than previously held on a permanent basis in the competitive service.
2. A time-limited promotion for more than 120 calendar days to a higher graded position.
3. A detail of more than 120 calendar days to a higher graded position or to a position with higher promotion potential or details regardless of grade to team leader, supervisory, or national impact positions, or any positions within the office of the Regional Administrator (or equivalent) or higher;
4. A selection for training as part of an authorized training agreement, part of a promotion program or required before an employee may be considered for a promotion;
5. A reassignment or change to a lower grade, to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by RIF regulations).
6. A transfer to a position at a higher grade or with more promotion potential than in a position previously held on a permanent basis in the competitive service. A reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

Commented [SA1]: Agency: We do not agree to deletion.

Commented [OPM2R1]: AFGE
Standing objection...see above

Commented [SA3R1]: Agency: 11/30/22—The parties appear to be at impasse on this and above.

Commented [OPM4R1]: AFGE
The Union understands the Agency's position, but wants the contract silent on this matter.

Commented [SA5]: Agency 11/30/22 -Parties appear to be at impasse on this matter. The agency cannot accept union's deletion. The agency must have the ability to do details of more than 120 days without competitive procedures (posting on USAJobs/etc.) where no promotion is entailed to meet mission needs.

Commented [OPM6R5]: AFGE
Union can accept "to higher grade" language IF Agency can accept additional language

Agency asked what is a "national impact" position? High visibility positions/issues

Commented [OPM7R5]: AFGE
Union reinserted language regarding "choice" details...thi

Commented [SA8]: Agency: Reject deletion. Competitive procedures are required and appropriate for complete

Commented [OPM9R8]: AFGE
Standing objection...see above

Commented [SK10R8]: Competitive status is required legally for this to occur.

Commented [SA11R8]: Agency: 11/30/22. Trying to understand if the union is proposing deleting this languag

Commented [SA12]: Agency: rejects deletion

Commented [OPM13R12]: AFGE
Standing objection...see above

Commented [SK14R12]: Competitive status is required legally for this to occur.

Commented [SA15R12]: Agency: 11/30/22. Same comments as above. The use of competitive service in thi

Commented [SA16]: Agency: rejects deletion.

Commented [OPM17R16]: AFGE
Standing objection...see above

Commented [SK18R16]: Competitive status is required legally for this to occur.

Commented [SA19R16]: Agency: 11/30/22. Same comments as above. The use of competitive service in thi

B. Non-Competitive Actions. The following non-competitive placement actions can be taken without using the competitive procedures described in the Agency's Merit Promotion Order 3115:

1. Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). Career ladder promotions are not automatic, and all qualifications and eligibility must be met prior to making the action effective.
2. Promotion Based on Reclassification When:
 - a. No significant change occurs in the duties or responsibilities and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or
 - b. The position is upgraded due to accretion of additional duties and responsibilities and all of the following provisions are met:
 - i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are administratively absorbed into the new position, and the former position is abolished);
 - ii. The new position has no known (i.e., career ladder) promotion potential beyond the grade of the proposed non-competitive promotion (i.e., accretion action);
 - iii. The additional duties and responsibilities assigned to or accrued by the incumbent do not adversely affect or impact the grade-controlling duties and responsibilities of other positions in the unit; and
 - iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or employee's supervisor, or other fact-gathering method).
3. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the job announcement stated the temporary promotion could lead to a permanent position.
4. Temporary Promotion of an employee for 120 days or less, or for more than 120 days to a grade level held previously on a permanent basis in the competitive service or in another merit system which OPM has an interchange agreement, and the employee was separated or demoted for reasons other than performance or conduct.
5. Placement as the result of Priority Consideration as a remedy for candidates not given proper consideration in a competitive promotion action;
6. In accordance with 5 CFR 351 and the RIF Article of this MCBA, Reduction in Force Placements which result in an employee receiving a position with higher promotion potential;

Commented [BJ20]: EPA: agency will delete in exchange for language at start of section

Commented [OPM21R20]: AFGE
Union position is to be silent on this matter...accept deletion

Commented [OPM22]: AFGE
Union can accept Agency additional language IF Agency accepts Union deletion

Commented [SA23R22]: Agency: 11/30/22 The agency cannot agree to the union's proposed deletion of the interchange agreement language. This will hurt/disadvantage current EPA employees who have worked at other agencies. Further, this language is currently the process used.

If we cannot agree to leave in the interchange language (which is authorized by the regs), the parties appear to be at impasse.

Commented [SA24]: Agency: We cannot agree to union proposal, which would limit agency ability to do non-competitive 120 day temp promotions. This is an impasse position for the agency.

Commented [OPM25R24]: AFGE
Union cannot accept this language

Commented [PM26R24]: AFGE
Union requests link to regulation

Commented [SA27R24]: Agency: 11/30/22 See 5 CFR 335.103 <https://www.law.cornell.edu/cfr/text/5/335.103>

Can the parties agree to accept the language regarding interchange agreements? If not the parties appear to be at impasse.

Commented [BJ28R24]: union argues this need not be in contract if agency already using this procedure. Doesn't appear top be in 335.103. Agency will look at this.

Commented [OPM29R24]: AFGE
This is discretionary...the Agency does NOT need to include this language
"An interchange agreement gives current federal employees in the excepted service the option to apply to merit promotion jobs in the competitive service.
You're eligible to apply to a merit promotion job in the competitive service, if:
You're a current federal employee in the excepted service (serving on a permanent appointment, not time-limited).
Your agency has an interchange agreement with the agency where you want to apply."

1. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Greater Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service ~~(or in another merit system with which OPM has an interchange agreement)~~ and did not lose because of performance or conduct reasons.
2. Promotion resulting from successful completion of a Training Program for which the employee was competitively selected;
3. Selection from the Re-employment Priority List at the same or lower grade level than the position from which selected;
4. Reinstatement to any Position of a career or career-conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c)(3);
5. Promotion as a Legal Remedy as ordered or agreed upon in a legal or administrative proceeding; and
6. Details to a position with the same promotion potential.

C. Area of Consideration (AOC). Since the AOC targets the group of candidates who will be considered for competitive selection, it is important that it be sufficiently broad to uphold the basic merit principles of open competition, including that all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. When establishing the AOC, selecting officials ~~shall be encouraged to~~ consider appropriate sources which are likely to help the Agency meet its mission. The minimum area of consideration is the organizational unit, no less than a Division or Office, which may produce at least two minimally qualified candidates for consideration. Applicants from outside of the area of consideration are ineligible for referral under the job announcement. This includes current agency employees who are outside the advertised area of consideration. When the stated area of consideration yields less than two minimally qualified candidates, the area of consideration may be extended, and the vacancy may be re-announced.

1. Selecting Officials have the option of establishing an AOC larger than the minimum described above, especially if experience shows that those minimum areas fail to provide enough qualified candidates
2. An AOC will be established for each vacancy;
3. In accordance with 5 USC 3327, OPM must be notified of job opportunities in the competitive service.

D. Posting Vacancy Announcements

1. The announcement will be posted on USAJOBS ~~and the Agency's intranet~~ for a minimum of ~~five calendar~~ 7 working 15 calendar days.
2. Applications submitted electronically on or before the closing date will be accepted.
3. At a minimum, the vacancy announcement will contain:
 - a. Title, series and grade(s) of the positions advertised and job announcement number;
 - b. Geographic and organizational locations;

Commented [OPM30]: AFGE

This language would allow for abuse

Commented [OPM31R30]: AFGE

Union can't accept this language

Commented [SA32R30]: Agency: 11/30/22. The agency cannot agree to the union's proposed deletion of the interchange agreement language. This is the current process and ensures that EPA employees whether they started at EPA or another agency are treated fairly and equitably. This deletion will potentially hurt/disadvantage current and future EPA employees who have worked at other agencies.

If we cannot agree to leave in the interchange language (which is authorized in the regs) the parties appear to be at impasse.

Commented [BJ33R30]: same discussion as above.

Commented [OPM34R30]: AFGE

see above comment

Commented [BJ35]: EPA will delete in exchange for language at start of section.

Commented [OPM36R35]: AFGE

Union position is to be silent on this matter...accept deletion

Commented [SK37]: Agency, managers should not be required to consider every source, that is overly burdensome.

Commented [OPM38R37]: AFGE

Union revised language to address Agency concerns

Commented [PM39R37]: AFGE

Agency to consider

Commented [SA40R37]: Agency: 11/30/22 The parties appear to be at impasse. Agency, managers should not be required to consider every source, that is overly burdensome.

Commented [BJ41R37]: Agency to further consider AOC-scope issue

Commented [OPM42R37]: AFGE

Union awaits Agency's response

Parties agree to keep thinking about this

Commented [BJ43R37]: EPA: "are encouraged" as far as we are willing to go; plus, we do not see a need for this ...

Commented [OPM44R37]: AFGE

The Union notes that this language is problematic...when ...

Commented [BJ45]: add back in discussion from union's last proposal

Formatted: Highlight

Formatted: Highlight

- c. Summary statement of the major duties and responsibilities;
- d. Minimum OPM qualification requirements plus any Quality-ranking factors and selective factors, if applicable;
- e. Knowledge, skills and abilities and/or competencies required. Vacancy Questions included in vacancy announcements will be based on the position. It is understood that vacancy questions and any relevant weighting factors will be developed and identified prior to announcing the vacancy.
- f. A Human Resources representative;
- g. Application procedures (where, how, and what to submit);
- h. Opening and closing dates, including any cut-off conditions;
- i. Promotion potential of the positions;
- j. A statement of EEO;
- k. evaluation method for rating applicants;
- l. special conditions of employment (e.g., frequent travel or geographic mobility requirements);
- m. Area of consideration;
- n. whether the position is eligible for telework and/or an alternative work schedule;
- o. If the position location is advertised as "remote" the job announcement will indicate so under the location section of the job announcement; and
- p. Number of positions expected to be filled at the time if more than one.

E. Methods of Locating Merit Promotion Candidates. All recruitments where the agency chooses to utilize the Merit Promotion hiring authority will be posted at a minimum on USAJOBS (and the Agency's intranet).

F. Priority Consideration involves the referral of individuals who must be considered before other candidates. If the priority consideration candidate is not selected, upon request the Agency will inform the person why they were not selected. Types of Priority Consideration include:

1. Repromotion Consideration Eligibles. Employees demoted in the Agency without personal cause or given grade/pay retention are entitled to priority consideration for any vacancies for which they qualify where the planned area of consideration includes their local commuting area. Repromotion eligibles are entitled to priority consideration for 2 years unless they attained the grade from which they were demoted or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.
2. Candidates Who Did Not Receive Proper Consideration In A Previous Merit Promotion Action Due To A Procedural, Regulatory Or Program Violation. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:

Commented [SK46]: This will be our impasse position. Posting two places is twice the work and interested people still need to go to usajobs to apply.

Commented [OPM47R46]: AFGE
Union will agree to delete IF agreement on 10 working days

Commented [OPM48R46]: AFGE
Union willing to delete IF seven (7) working days for announcements is accepted by Agency

Commented [BJ49R46]: EPA: Agency does not agree to 7 days.

Commented [OPM50]: AFGE
Union only agreed to delete this language based on the number of days for an announcement.

Commented [SA51]: Agency 11/30/22 This is our impasse position.

Commented [BJ52]: same comments as above

Commented [OPM53R52]: AFGE
Union comment is same as above...impasse

- a. It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;
 - b. The employee is qualified for and would have been in the best qualified group; and
 - c. The vacancy is at the same grade level with no higher potential than the position for which consideration was lost.
3. Employees Who Receive Priority Consideration Based on An EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.
4. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the regulatory requirements (i.e., under the Career Transition Assistance Plan or the Interagency Career Assistance Program).

Section III. Application Procedures.

- A. Employees who wish to apply to jobs posted on USAJOBS should follow the instructions in the USAJOBS vacancy announcement.
- B. Accepting Applications.
 1. Unless otherwise specified, applications must be submitted to USAJOBS by all candidates by the closing date and time specified in the vacancy announcement. For assistance in applying for a vacancy, applicants may contact the human resources representative listed on the vacancy announcement. EPA will provide reasonable accommodation to applicants with disabilities. Employees who require reasonable accommodation for any part of the application process, should follow the instructions in the vacancy announcement for requesting an accommodation.

Section IV. Eligibility Requirements.

- A. General. Applicants must meet all requirements of the vacancy announcement, including OPM qualification requirements and any selective factors. Selective factors are knowledge, skills and abilities in addition to the minimum qualification standards set by OPM and constitute part of the minimum eligibility requirements for the vacancy. Selective factors are determined by appropriate management officials. Selective factors must be clearly stated in the vacancy announcement. Time-in-grade requirements must be clearly set forth in the vacancy announcement. Applicants responding to open continuous announcements must meet the eligibility requirements as stated in the open continuous vacancy announcement.
- B. Minimum Qualification Requirements. Minimum qualification requirements (for example, educational, medical, experience, etc.) are determined by OPM for each occupational series. Qualification standards are available on the OPM website.

C. Distinguishing Between Candidates. Candidates who meet eligibility requirements will be divided into two categories:

1. Promotion Eligibles - those applicants who must compete in order to be placed in the position (applicants in the promotion eligible category will be evaluated in accordance with the provisions below); and
2. Noncompetitive Eligibles - those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority (e.g., persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in the position. Noncompetitive eligibles will be referred alphabetically without being rated and ranked. Such referrals may be made up until the time that the certificate of eligibles is sent to the selecting official.

D. Evaluation of Candidates

1. Applications may be evaluated by an SME, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated staffing system is used to qualify, rate and/or rank applicants, then an HR representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, an adjustment will only be made in the event that an applicant's answer(s) to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the promotion package.
2. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (e.g., work experience, education and training).
3. Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy announcement will be identified. In an automated staffing system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer.
4. A rating plan must be developed by the subject matter expert or human resources representative. The rating plan is the list of questions which are derived from the KSAs that an applicant will answer. The application of the rating plan will provide a self-assessment of each applicant.
5. All candidates meeting the minimum qualifications for the position will be rated and ranked, regardless of the number of applicants.
6. Contents of rating and ranking worksheets of candidates, deliberations concerning the candidates, and the numerical scores assigned to the candidates from the hiring process are confidential and only provided to those with a need to know.

E. Ranking and Referral of Candidates.

1. In those cases where the Agency finds that the review of qualifications would benefit from direct involvement of subject matter experts (SMEs), one or more SMEs may be utilized to help to evaluate the candidates. Normally the SMEs will be from the same Office/Region as the vacancy.
2. Responses by candidates to the questionnaire may be verified with information contained in the applicant's resume and the applicant's submitted documentation by Human Resources or one or more subject matter experts (SMEs).
3. The assessment of each candidate by SMEs will be based solely on the documentation before the SMEs and not on the personal knowledge about the candidate.
4. The SMEs generally will be of the same or higher grade than the position to be filled. In exceptional circumstances, the SME may be of a lower grade than the position to be filled.
5. Determining Best-Qualified. Promotion eligible candidates will be rated against the questions set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. Candidates are given a numeric rating based on self-assessment and the HR Specialist evaluates each applicant's background to determine the degree to which they meet the qualifications of the position. Based on this review, an overall rating is ultimately assigned to each applicant.
6. When there are ten (10) or fewer qualified candidates for a vacancy, candidates who meet basic eligibility requirements may be referred to the selecting official.
7. All referred candidates will be listed alphabetically on a certificate to the selecting official, except on VRA and Schedule A certificates where they are referred in preference order.
8. Duration of Merit Promotion Certificate. Normally, certificates are issued with a 30-day due date and a 90-day expiration date. Certificates may be extended for a total of 180 days with a written request from the selecting official to the servicing HRO.
9. Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to 180 90 days. A similar position is one that is located in the same commuting area, has the same title, series and grade (and promotion potential, if applicable,) and requires the same KSA's or competencies.
10. When ranking candidates for vacancies at multiple grades, each candidate will be ranked separately by each grade for which the candidate applied.

F. Interviews and Selections

1. Interviews may be conducted at the discretion of the selecting official or interview panel.
- ~~1. Selecting officials must use one or more assessment methods to select the best candidate(s) for hiring, including (but is not limited to):~~
 - ~~a. Resume reviews~~
 - ~~a. Responses to questions on USAJobs~~
 - ~~a. Writing Samples~~

Commented [BJ54]: EPA: union wants to strike 'generally'

Commented [BJ55R54]: EPA: doesn't see a compelling reason why an SME always must be same grade or higher. It interferes with assignment of work, plus it is a good experience for employees to act as SMEs

Commented [OPM56R54]: **AFGE**
Union disagrees with comment above. This is not the time for junior employees to gain experience.

Commented [OPM57]: AFGE
Union to continue to discuss and Agency to discuss with Kathryn and Amy

Commented [BJ58]: EPA: Please NOTE where you have deleted our language.

Commented [OPM59R58]: **AFGE**
Noted
Union concerned with (1) the number of days an announcement is open and (2) individuals not applying for a specific position then losing the ability to apply for another position

Commented [OPM60]: AFGE
Union would be willing to accept Agency language on #4 and #8 IF 15 calendar days for vacancy announcements

Commented [BJ61]: EPA: see comment above about deleting language.

Commented [OPM62R61]: AFGE
Union reinserted 90 days

- ~~a. Work samples~~
~~a. Interviews~~
2. ~~If the selecting official chooses to interview and/or convene the an interview panel, the selecting official/interview panel may will utilize will at a minimum review resumes and/or responses to questions, and/or other one or more appropriate assessment assessment methods (e.g., work sample, writing sample) to choose the candidates on the certificate to interview. The selecting official and/or interview panel may then elect to interview all, some (defined as at least the top three (3), if there are three), or none of the candidates. When choosing to interview some of the candidates, the selecting official and/or interview panel will interview at least the top three candidates (if there are three) as determined from the review of resumes/responses.~~
3. ~~If the selecting official chooses to interview and/or convene an interview panel, the selecting official/interview panel should select interview candidates based on information obtained from the employment application, reference checks, performance appraisal, work samples, etc. When choosing to interview some of the candidates, the selecting official and/or interview panel will interview at least the top three candidates (if there are three) as determined from the review above.~~
4. ~~Selecting officials should select the best candidate for their position(s) based on information obtained from the employment application, reference checks, interviews, performance appraisal, work samples, etc.~~
- 2.5. ~~Selecting officials will consider all materials submitted by the candidate(s) or interviewee(s) (if interviews were conducted) must use one or more assessment methods to select the best candidate(s) for hiring pursuant to EPA Order 3115, EPA Merit Promotion Plan, including (but is not limited to):~~
- ~~Resume reviews~~
 - ~~Responses to questions on USAJobs~~
 - ~~Writing Samples~~
 - ~~Work samples~~
 - ~~a. Interviews~~
- 3-6. ~~Selecting officials and members of interview panels will be continue to be trained and provided guidance on interviewing and DEIA (e.g., unconscious bias training). The Agency provides unconscious bias training opportunities, which supports unbiased interviewing and hiring.~~

G. Release and Notification of Applicants.

- The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one complete pay period for promotion, following the selectee clearing all requirements for the new position. When local workforce and program conditions permit, an employee will be released no later than two complete pay periods for reassignments, following the selectee clearing all requirements for the new position. When an employee is nearing the end of a within-grade increase waiting period, consideration should be

Commented [CR63]: Agency is offering this in exchange for the Union's agreement on section 5., below.

Formatted: Strikethrough

Commented [BJ64]: EPA: Again, please do not delete our language without noting it.

Formatted: Strikethrough, Highlight

Formatted: Strikethrough

Formatted: Strikethrough, Highlight

Formatted: Strikethrough

Commented [BJ65]: EPA: when we contacted SSC, they considered adding 'work sample' as it is considered of high predictive validity and high face validity; so it's considered by applicants to be fair and appropriate.

Formatted: Strikethrough

Commented [CR66]: Agency is offering this in exchange for the Union's agreement on section 5., below.

Commented [OPM67R66]: AFGE
This language is from 3115 "Selecting officials should select the best candidate for their position(s) based on information obtained from the employment application, reference checks, interviews, performance appraisal, work samples, etc."

Commented [OPM68]: AFGE
Members of panel must be trained as well

Commented [SA69R68]: The SSCs (or regional HROs) do not have resources to support this type of training. The parties appear to be at impasse on this language.

Commented [OPM70R68]: AFGE
Were all managers given DEIA training in February of 2022? Isn't there a requirement for hiring officials to take unconscious bias training and cross check it? If its been a couple of years, take it again? (Kathryn)
What is the state of DEIA training for all employees and managers?

Commented [OPM71]: AFGE
Union rejects this deletion
Union could be flexible based on progress toward overall DEIA goals
? One diverse "expert" interview and hiring panel

Commented [OPM72R71]: AFGE

Commented [OPM73R71]: AFGE

Commented [SK74R71]: Agency proposed alternate language.

Commented [OPM75R71]: AFGE
Union made revisions

Commented [SA76]: Agency 11/30/22 This is the language the agency can commit to.

given to releasing an employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

2. All internal EPA interviewees (first and second interviews) will be notified of the outcome of the vacancy including the name of the person who was appointed to the position. If this does not occur, candidates have the option to contact the selecting official or their local HRO/PMO to receive the name of the appointee.

H. Disclosure of Information

1. The Agency's merit promotion plan will be posted on the intranet.
2. Applicants will be notified of:
 - a. Whether they were found eligible;
 - b. Whether they were referred to the selecting official;
 - c. Whether or not they were selected; and
 - d. Upon request to the selecting official, who was selected.
3. In addition, applicants may request and receive information concerning:
 - a. Whether the vacancy announcement was canceled;
 - b. Areas, if any, in which they should improve to increase their chance for future promotion; and
 - c. The applicant's own rating assigned in the ranking process

4. In the processing of grievances related to merit promotion actions taken under the terms of this Article, the employee's representative will, upon request to the appropriate servicing HRO, be furnished the relevant and necessary information in accordance with the requirements of 5 USC § 7114 (B)(4). **The Agency will produce upon request the following material (e.g., the application package, interview notes, quality review results) used in the ranking process and/or by the Selecting Official that is contained in the Merit Promotion file used in the selection action, subject to the following:**

i) **Evaluative material will be confined to the applicants appearing on the Best Qualified List;**

ii) **No information will be released that includes identifying information, in order to protect privacy rights;**

iii) _____

Commented [OPM77]: AFGE rejects this deletion

Formatted: Font: Bold

Formatted: Font: Bold

Formatted

Commented [OPM78]: AFGE rejects this deletion

Commented [OPM79]: Cross check NAGE and NTEU

- J. The fact that an employee is the subject of a conduct investigation will not prevent or delay their proper consideration for promotion, unless the Agency determines that such is necessary to protect the integrity of the Agency.
- K. An employee's accumulation or balance of annual or sick leave may not be considered by ranking officials and/or selection officials as a basis for selection or non-selection.

However, this does not preclude the consideration of leave balances if there is abuse of leave or resultant effect on the employee's dependability or work performance.

- L. Employees may be entitled to retroactive pay in connection with improper personnel actions in accordance with laws and regulations.
- N. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, the name of all such employees shall be submitted on a Certificate of Eligibles for priority consideration to the selecting official in alphabetical order.

Section V. Within Grade Increases

- A. An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which their position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of:
 - 1. each 52 calendar weeks of service in pay rates 1, 2, and 3;
 - 2. each 104 calendar weeks of service in pay rates 4, 5, and 6; or
 - 3. each 156 calendar weeks of service in pay rates 7, 8, and 9;
- B. Subject to the following conditions:
 - 1. the employee did not receive an equivalent increase in pay from any cause during that period; and
 - 2. the work of the employee is of an acceptable level of competence.
- C. Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis as it pertains to within grade increases.
- D. Employees may be entitled to retroactive pay in connection with delayed within grade increases subject to laws and regulations.
- E. An acceptable level of competence shall be based on a current rating of record of "Effective" or its equivalent or higher. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least 90 days, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.
- F. An acceptable level of competence determination shall be delayed when either of the following applies:

1. An employee has not had the minimum period of 90 days on their PARS and the employee has not been given a performance rating in any position before the end of the waiting period; or
 2. An employee is reduced in grade because of unacceptable performance to a position in which they are eligible for a within-grade increase or will become eligible within a 90-day period.
- G. Where employees have been assigned to their present supervisor for less than ninety (90) days, the supervisor shall secure the views of the employee's previous supervisor or appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members who were part of the employee's supervisory chain during the rating period before making a determination.
- H. Denial of Within-Grade Increase. When it is determined that an employee's performance is not at an acceptable level of competence (effective), within five days of indicating unacceptable performance to the Shared Service Center (SCC), the negative determination shall be communicated to the employee in writing. This communication shall set forth the reasons for any negative determination and the respects in which the employee must improve their performance in order to be granted a within-grade increase.
- I. Employee Complaints: Employees wishing to raise a complaint of discrimination regarding non-selection in a particular promotion action may do so through either the Agency's discrimination complaint process or the negotiated grievance procedure. Employees must follow appropriate time frames provided for in the negotiated grievance procedure or the discrimination complaint process. Employees may not file a grievance based solely on non-selection.
- J. Appeal of Denial of Within-Grade Increase. An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 calendar days after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the employee is requesting reconsideration. Upon request, the employee may meet with the supervisor. The employee may have a Union representative present for this meeting.
- K. The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration. Where an employee is denied their request for reconsideration, the letter transmitting the decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure.

Commented [BJ80]: EPA: separate QSI document should resolve this?

Section VI Non-Supervisory Attorney Promotion Process. The parties agree that this section applies to bargaining unit attorney positions, which are in the excepted service.

A. Excepted service positions are excepted from competitive rules, but are subject to Merit System Principles, including the principle that advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition. Management may choose to will exercise its exclusive authority and advertise an attorney position under any method (e.g., USAJobs, TalentHub, email solicitation); which assures provides -the applicants AOC receive equal opportunity.

1. Management reserves its right not to fill vacant positions and its right to reassign attorneys to vacant positions.

B. Optional Procedures. When management chooses to advertises a vacant non-supervisory attorney positions, the on USAJobs, posting of the announcement will include:

- i. A description of the job duties.
- ii. Who is eligible to apply;
- iii. Instructions for applying;
- iv. How long applications will be accepted
- v. The area of consideration (AOC) (e.g., within the region only, or to include other EPA legal offices); and
- vi. How long the announcement will be open (no less than 15
calendar days);
- vii. An explanation of what documents need to be submitted as part of the application (e.g., resume, writing sample, summary of experience,) and in what format;
- viii. Whether the position is subject to background investigation or security clearance; and
- ix. Other requirements mandated by law.

C. Assessment criteria used to evaluate candidates must be fair, job-related and applied in accordance with merit system principles.

D. Amended announcements will identify changes that were made to the original announcement.

D.E. If an announcement is cancelled, applicants shall be notified.

E.F. When an employee applies for more than one announced position, the employee will receive full consideration for each position for which they have applied and for which they meet the required qualifications.

F.G. After the announcement closes:

Commented [OPM81]: AFGE

The Union asks the Agency...is it the Agency's position that Merit System Principles do not apply to excepted service employees?

Commented [SA82]: Agency 11/30/22 Parties appear at impasse.

Formatted: Highlight

Formatted: Highlight

Commented [BJ83]: Agency to consider publishing regional GS-15 atty promotion procedures.

Commented [OPM84]: AFGE

Link to above

Commented [OPM85R84]: AFGE

linked to above

Formatted: Indent: Left: 2 , No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0.5 , Space After: 8 pt, No bullets or numbering

1. Interviews may be conducted at the discretion of the selecting official or interview panel.
2. The selecting official and/or the interview panel ~~may~~will review resumes, responses to questions, and/or other appropriate assessments (e.g., work sample, writing sample) to choose the candidates on the certificate to interview consistent with Section IV Eligibility Requirements F.2 above. The selecting official and/or interview panel may then elect to interview all, some, or none of the candidates.
3. When opting to interview some of the candidates on the certificate, the selecting official and/or the interview panel will interview at least the top ~~group three~~ (3) of candidates according to the selecting official and/or the interview panel review.
4. Selecting officials will consider all materials submitted by the candidate(s) or interviewee(s) (if interviews were conducted) to select the best candidate(s) for hiring pursuant to EPA Order 3115, EPA Merit Promotion Plan.

Commented [OPM86]: AFGE
To reflect language when agreement is reach above

Formatted: Indent: Left: 1 , No bullets or numbering

1. ~~Pursuant to with Merit System Principles, the selecting official's selection will be based solely upon relative ability, knowledge and skills associated with the vacancy.~~
2. The selecting official and/or the interview panel will review resumes and/or other materials submitted as part of the application to choose the candidates to interview.
5. ~~If an interview panel is convened,~~ The Selecting Official has the right to select or not select any of the applicants recommended by a panel.
- 3.

Commented [OPM87]: AFGE
Union can accept deletion

Formatted: Indent: Left: 1 , No bullets or numbering

G.H. Setting the Effective Promotion Date: Management will work with the appropriate Shared Service Center to establish a mutually agreeable promotion date based on mission and program requirements. When a selectee is nearing the end of a waiting period for a within-grade increase, consideration should be given to effectuating the promotion at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

PERFORMANCE

Section 1. Overview

The Agency will administer the performance management program to comply with 5 U.S.C. Chapter 43, 5 U.S.C. Chapter 75, 5 CFR Part 430, 5 CFR Part 432 and 5 CFR Part 752, In compliance with 5 CFR 430.208(c) the Agency will not establish a forced distribution of summary levels. Each employee's performance appraisal will be based on the supervisor's evaluation of the employee's performance measured against the employee's performance standards (including critical elements and, as applicable, non-critical elements).

Section 2. Definitions

The definitions contained in 5 CFR Part 430 will apply to terms used in this Article.

Section 3. Critical Elements and Performance Standards

- A. Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level."
- B. The Agency will comply with 5 CFR Part 430 when making its decision as to the number of rating levels for each critical element, when determining individual employees' performance ratings, and when determining whether a rating level will have a written performance standard.
- C. Application of all performance standards must comply with 5 CFR Part 430.

Section 4. Communications

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will verbally discuss the performance plan with each employee. The supervisor will notify the employee when and where a draft performance plan is available for review.
- B. As required by 5 CFR 430.206(b)(1): "Agencies shall encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The supervisor will give the employee the final performance plan and ask the employee to sign and date to acknowledge receipt. Though the rating cycle begins October 1, the date the employee signs the plan, or declines to sign, is the beginning date of the minimum period of performance. If the employee declines to sign the plan, then the supervisor notes the disagreement and the date in the Agency's performance management system. Employees and supervisors may add additional comments and concerns to the notes sections of the Agency's performance management system.

1. Once a performance plan is final, during the rating period, the supervisor will discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan. Such changes initiating a discussion will include but are not limited to:
 - a. change in the work unit's goals or objectives;
 - b. change in assignments;
 - c. change in the work processes of the unit; or
 - d. an employee is detailed for more than 90 days.

C. Performance discussions:

1. For each appraisal period there will be a progress review (also called a "midyear review"), generally occurring in April of the appraisal year.
2. Frequent informal reviews and discussion of performance throughout the appraisal period may be requested by the employee or supervisor at any time.
3. Progress reviews shall be scheduled at least one week or more in advance of the review in order to allow the employee to provide advance input (self-assessment) at the option of the employee.
4. Progress reviews shall be conducted in a manner that protects the privacy of the employee. The employee may request that a Union representative be present at a progress review.
5. The purpose of any performance review and discussion between the supervisor and the employee is to:
 - a. evaluate the employee against established critical elements and standards;
 - b. improve work processes or products;
 - c. discuss employee development including training opportunities which may include on the job training;
 - d. assess accomplishments; and
 - e. resolve problems.

D. Interim Ratings

1. Interim ratings must be prepared for employees in the Agency's performance management system who have been under a performance plan for the minimum period of performance (90 days) when the employee:
 - a. completes a detail of ninety (90) days or more;
 - b. is reassigned to another EPA organization;
 - c. transfers to another Agency; or
 - d. has a supervisor who departs from that supervisory position.
2. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing

supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided. Performance highlights will be similar in scope as the progress reviews described above.

3. The supervisor must indicate all sources of input considered in preparing the interim rating.

E. Timing of the Appraisal

1. Annual performance appraisals (ratings of record) will be scheduled within 30 days after the close of the appraisal period.
2. Appraisals may deviate from the schedule above in the following circumstances:
 - a. The employee was on leave for an extended period during the performance cycle inhibiting a complete and accurate performance appraisal;
 - b. The employee's PARS is issued with fewer than 90 days prior to the completion of the rating period; or
 - c. the employee receives notice of Unacceptable performance (either through the issuance of a PIP or other notification). In that case, the rating period is extended, if needed, until the PIP period has ended.
 - d. In the event the supervisor leaves the position without providing an evaluation and the employee has otherwise met the requirements to receive a rating of record, then the Agency will rate the employee based on appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members of the employee's supervisory chain.

F. Reduction in Force (RIF)

1. In the event of a Reduction-In-Force (RIF), employee performance ratings will be evaluated in accordance with applicable law, rule, and regulation.
2. For employees with no rating (such as 100% official time, active-duty leave, etc.) 5 C.F.R. § 351.504 shall apply for the period of service.

G. Appraising Disabled Veterans.

The Agency will comply with Executive Order 5396 from July 17, 1930, regarding a disabled veteran's efficiency rating who properly requested leave.

H. Appraising Employees Called to Active Duty or Volunteering for Emergency Work

1. A supervisor's appraisal of the performance of an employee in the Armed Forces Reserve or National Guard who is called to active duty, shall not be adversely impacted due to the employee's absence from work. These employees will not receive a rating from the Agency based on the time period of their service.
2. A supervisor's appraisal of the performance of an employee who has volunteered to assist in an emergency declared by a local, state or federal governmental Agency, department or entity, and sanctioned by the Federal government or the Agency, shall not be adversely impacted due to the employee's absence from work. These employees will not receive a rating from the Agency based on the time period of their work on that emergency.
3. Appraisal periods may be extended in accordance with the "timing of the appraisal" provision above.

I. Protected Union Activities

1. There is no performance rating for union activities. Performance evaluations will be based only on Agency work performed.
2. A union representative's work on authorized official time will not negatively impact their performance evaluation. These employees will not receive a rating from the Agency based on the time period of their authorized official time.
3. There will be no negative impact on employee performance evaluations because of participation in union functions.

J. Sources of Appraisal Input

1. The supervisor will ensure that input used in the appraisal process is related to the employee's critical elements. The input used will be factual and relevant.
2. Employees and Supervisors will discuss during performance appraisal meetings the sources of input considered in formulating performance evaluations. Employees are encouraged to raise any concerns regarding their performance rating, including any information overlooked or concerns regarding the sources of input
3. Nothing in this agreement prohibits supervisors from adjusting employees' ratings based on performance discussions with employees. Nothing in the agreement prohibits employees from adding notes to the Agency's performance management system.
4. Supervisors will communicate areas of improvement and performance issues as soon as practicable in an effort to allow the employee sufficient time to improve their performance prior to the performance evaluation.

5. Standards of performance will make allowances for factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control. If a supervisor determines, in consultation with an employee, that an employee cannot be held accountable on a certain critical element (for instance, if no work was assigned under that CE), the supervisor shall remove that critical element from the employee's performance plan.

K. Employee Self-Assessment

1. Employees are encouraged but not required to provide their supervisor with a written self-assessment (e.g., list of accomplishments) at the middle and end of the appraisal period. The supervisor will consider an employee's self-assessment(s) (if they are provided) and other appraisal input when assigning a rating to each critical element at the end of the performance cycle.

L. Annual Rating of Record

1. Employees will be appraised at least once a year and given a rating of record. The rating period will be indicated in USA Performance. The rating will normally be completed within 30 days after the end of the rating period, unless the rating period is extended or the employee is otherwise not rated.
2. It is understood that employees will only be evaluated on work they were assigned and for which they have been provided EPA-specific training necessary to perform their job functions (e.g., national data systems, required OJT). Employees may be evaluated based on knowledge, skills, and abilities they were required to possess to obtain their position. The supervisor must provide a narrative description for the summary rating.
3. Assigning the Summary Rating. Once all of the critical elements (except for those which have been removed as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:
 - a. Distinguished: one half or more of the critical elements are rated Distinguished, and none of the critical elements are rated Unacceptable.
 - b. Exceeds Expectations: one half or more critical elements are rated Exceeds Expectations, none lower than Effective;
 - d. Effective: one half or more of the critical elements are rated Effective and none of the critical elements are rated Unacceptable;
 - e. Unacceptable: one or more critical element is rated Unacceptable.
4. Approving the Rating of Record:

- a. If the summary level is Effective, **Exceeds Expectations** or Distinguished, the supervisor must sign and date the form to approve the rating of the record.
- b. Summary ratings of Unacceptable require a higher-level management review and approval.

Section 7. Performance Improvement Plan (PIP)

- A. At any time during the rating period, if the supervisor identifies an employee's (as defined by 5 U.S.C. § 7511(a)(1)) performance as Unacceptable, as referred to above in one or more critical elements, the supervisor may notify the employee of their Unacceptable performance as described below. It is in the parties' best interests to address performance issues as soon as they are discovered. Prior to the issuance of a PIP, the supervisor will meet with the employee to communicate areas of potential improvement. This meeting will provide an opportunity for the employee and the supervisor to discuss the specific performance requirement(s) not being met, disclose the need for a Reasonable Accommodation, if applicable, and to raise potential causes of the problem. Nothing in this Article prevents an employee and their supervisor from having conversations regarding the employee's performance at any time during the rating period.
- B. The employee may request a union representative at any time during the process.
- C. When the supervisor determines based upon documentation that the employee's performance is unacceptable in one or more critical elements, the supervisor shall develop a draft written PIP, which will include a description of the basis for the PIP and provide it to the employee. Upon request of the employee or the employee's representative, the Agency will provide a copy of any supporting documentation referred to in the draft PIP.
- D. The draft PIP will inform the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance under the PIP.
- E. The employee and their union representative (if the employee requests one) may submit written feedback on the draft PIP within 2 days of receipt of the draft PIP.
- F. After the expiration of the 2-day period, the supervisor may issue the PIP. Once the supervisor issues the PIP, the supervisor will meet with the employee and discuss the approved PIP. The employee may invite a Union representative to be present at this PIP meeting. The goal of the PIP is to afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position.
- G. Timing. The employee's performance rating must be based on at least 90 days under the assigned critical elements.

- H. A supervisor may issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action (5 CFR Part 432) will be proposed until the completion of the PIP.
- I. A PIP will be in writing from the employee's supervisor to the employee. The time period for a PIP will generally last 90 calendar days but will be no less than 60 days. The PIP will afford the employee sufficient time to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position. The time period for the PIP may be shortened from 90 calendar days by mutual agreement of the parties or written justification from the supervisor. Under no circumstances shall the PIP time period be less than 60 calendar days. A specified beginning and ending date should be included, though extensions may be necessary. At any time during the PIP period the supervisor may conclude that improvement is no longer necessary based on the employee's improved performance. The supervisor will notify the employee in writing of this determination.
- J. Each PIP should be geared to the needs and circumstances of the situation. The following information should be included:
 - 1. The employee's name, position title, series, grade, and organization location;
 - 2. A description of the requirements that must be met, in terms of quality, quantity, timeliness, or manner of performance, for work to be rated "Effective".
 - 3. A written narrative explanation of what will be considered Effective performance;
 - 4. A description of the assistance the employee will receive from the supervisor;
 - 5. Provision for regular meetings with the employee to discuss progress and deficiencies.
 - 6. A list of assignments with due dates, or completion dates, if appropriate;
 - 7. A statement that the employee is expected to maintain Effective performance on the remainder of the critical elements;
 - 8. Examples of ways the employee can improve performance;
 - 9. A description of the assistance the employee will receive from the supervisor/Agency, such as a schedule of periodic performance reviews that will be held during the performance improvement period and appropriate training opportunities that are available; and
 - 10. Notification that failure to improve performance to Effective may result in a change to a lower grade, reassignment, or removal.
- K. If the employee's performance improves to Effective and remains at that level for one year from the beginning of the PIP period in accordance with 5 CFR 432.107(b) it will not be used as the basis for a Chapter 43 removal action and the PIP will be removed from USA Performance (or any successor system).
- L. The Agency will not place any PIP documentation (including the PIP itself) in the EOPF. This does not include any SF-50 (or successor form) that may result from the failure of a PIP.
- M. A PIP may be terminated or extended in situations such as those described below. If the PIP is terminated because of demonstrated Effective performance, the PIP memorandum will be

removed from the USA Performance system (or any successor system) after the employee's performance has continued to be Effective for one year.

- N. A PIP will be terminated if the employee moves to a different position at the same or different grade. The PIP is not continued in effect in the new position.
- O. A PIP may be terminated if the employee's performance improves to Effective prior to the expiration of the PIP.
- P. A PIP may be extended at any time by the supervisor with notice to the employee and their representative. The reason for the extension will be set forth in writing to the employee and their representative.
- Q. Notwithstanding the existence of an ongoing PIP, an employee may request a reassignment to another position as a means of resolving the performance issue, if agreed to by the Agency. An employee shall not be forced to successfully complete the PIP before moving on to another position.
- R. Expiration of a PIP. If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and their designated representative in writing of the status of their performance. If the employee's performance has improved to Effective, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of unacceptable. The new rating will be updated in the Agency's performance management system. Once the employee has been rated Effective, all relevant performance-related personnel actions will be processed accordingly.
- S. When there is a PIP issued to an employee, the employee's performance period for that year is extended through the duration of the PIP if necessary.
- T. Change of Supervisors while on a PIP. In the event that the employee's supervisor leaves the unit either temporarily or permanently, the employee and new supervisor, along with the employee's representative, shall meet within 7 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements. If the meeting does not occur within 7 days, the PIP may be extended by the number of days beyond 7 that the meeting occurs.
- U. Part-Time Employees. The Supervisor will give due consideration to the achievability of a PIP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

Section 8. Documentation for Performance Based Adverse Action

Before taking an adverse action based on an employee's failure to demonstrate acceptable performance, the Agency shall provide to the employee and their representative (if one has been selected) in writing:

- A. the results of the PIP; and

- B. any other material relied upon in formulating the adverse action.

Section 9. Performance Based Actions

- A. Should an employee's performance be determined to be unacceptable based on the results of the PIP, the Agency will consider the following possible personnel actions:
 - 1. reassignment of the employee;
 - 2. demotion to a position at a lower grade in accordance with 5 CFR 432; and
 - 3. removal of the employee from Federal service in accordance with 5 CFR 432.
- B. An employee whose reduction-in-grade or removal is proposed for unacceptable performance is-entitled to:
 - 1. A 30-calendar day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of that performance;
 - 2. A representative. The employee may file a written statement with the deciding official indicating the name, title (if any) and address of their representative(s);
 - 3. A reasonable time, but not less than 7 calendar days, to answer orally and/or in writing;
 - 4. Use a reasonable amount of duty time to prepare an answer; and
 - 5. A written decision which specifies the instances of unacceptable performance on which the reduction in grade or removal is based. The decision shall be issued within 30 calendar days after expiration of the advance notice period. The deciding official generally shall be at a higher level than the proposing official. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.
 - 6. By written agreement in advance of the deadlines, the parties may mutually agree to an extension of these time frames.

Section 10. Employee Objections

- A. Performance Plans. The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. If an employee believes that a decision or other action taken or not taken under this performance management program resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.
- B. Rating of Record. An employee who disagrees with their final rating of record may file a grievance under the provisions of the Negotiated Grievance Procedures Article of this MCBA. An employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision or other action taken or not taken based on the rating of

record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity (EEO) complaint.

Section 11. Reopener

- A. The Parties agree that the Agency has the right to modify the substance of the Performance Appraisal and Recognition System in accordance with 5 USC 7106. Should that occur, the Union will have the right to negotiate subject to this Agreement's Midterm Article.

Diversity, Equity, Inclusion and Accessibility

Section I. Introduction.

1) The principles set forth in this Article will be integrated across and deep throughout the Agency. The Agency and Union affirm the importance of advancing equity, civil rights, racial justice, and equal opportunity for all employees, while maximizing the diverse talents, skills, and experiences of the EPA community to achieve EPA's mission to protect human health and the environment through a sustained, equitable, and inclusive culture.

Formatted: Font: (Default) Times New Roman, 12 pt

1)2)

4. The parties will treat each other and employees with dignity and respect. Accordingly, the Agency will ~~endeavor to must~~ strengthen its ability to recruit, hire, develop, and retain our Agency's talent and remove barriers to equal opportunity. ~~It must also~~ The Agency will provide resources and opportunities ~~to which~~ strengthen and advance diversity, equity, inclusion, and accessibility across the Agency. The Agency will work toward a workforce that reflects the diversity of the American people, while adhering to Merit System Principles. A growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Font: Not Bold, Not Highlight

Formatted: Font: Not Bold

Formatted: Not Highlight

2)3) The Agency's recruitment efforts will include a focus on creating diverse applicant pools. The Agency will conduct outreach efforts which may include but are not limited to:

i. Reaching out to underrepresented and underserved communities; including minority-serving institutions (HBCUs, HSIs, etc.);

ii. Conducting outreach and recruitment efforts to members of underrepresented and diverse communities (e.g., the Native Youth Climate Conference; League of United Latin American Citizens; Blacks in Government; Clark Atlanta University; Spelman College and Morehouse College);

iii. The Agency will support applicants' accessibility needs through the Reasonable Accommodation process.

iv. Leveraging special hiring authorities, such as Federal internship programs, including Pathways Internship Program, to provide entry-level career development opportunities to students and recent graduates and Schedule A Hiring Authority for persons with disabilities.

v. Special Emphasis Program Managers and Union representatives are encouraged to set up automatic USAJobs notifications of recruitment and hiring activities

Commented [OPM1]: AFGE Union is willing to include this paragraph IF agreement is reached on the Pilot Projects

Formatted: Outline numbered + Level: 2 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Right + Aligned at: 0.75 + Indent at: 1

3)4) The Agency will follow Merit System Principles and practice equitable hiring, meaning:

- i) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
- ii) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- iii) If interviews occur, hiring managers are encouraged to use structured interviews and consider unconscious bias in the development of interview questions.

Section 2. Pilot Projects

- A. Pilot Projects #1, #2, #3 and #4 will operate for an appropriate length of time to determine effectiveness, but no less than one (1) year.
- B. The Agency will initially brief the Union on Pilot Projects #1, #2, #3 and #4. The Parties will meet on a quarterly basis thereafter, at a time to be determined by the parties. Quarterly meetings will continue for each Pilot Project until it is implemented, or the Agency determines not to implement the Pilot Project Agency wide. If the Agency decides not to implement a Pilot Project Agency wide, the Agency will inform the Union in writing explaining the Agency's reasoning for not moving forward.

C. Pilot Projects:

1. Pilot Project #1: The Agency will pilot automated processes to legally redact resumes with a goal to mitigate bias in selection for interviews. The Agency will begin with identifying the parts of the Agency that have already used "different methods to mitigate bias in the hiring process to include blind applicant reviews" and ascertaining the effectiveness of this effort in mitigating racial bias.
2. Pilot Project # 2. The Agency will pilot a legal method to standardize interviews with a goal to mitigate racial bias in hiring.
3. Pilot Project #3. The Agency will pilot a legal blind promotion process with a goal to mitigate racial bias in promotions.
4. Pilot Project # 4. The Agency will pilot ways to assess and ensure the diversity of its hiring panels with a goal to mitigate racial bias in hiring beginning with identifying hiring where the Agency has already performed a regular assessment of the diversity of hiring managers, selection officials and participants in hiring panels.
5. Pilot Project # 5. Within 90 days of the completion of Agency Head Review of this MCBA, the Agency will assess whether employees who are people of color face disparities in disciplinary actions by reviewing disciplinary actions taken in FY 2018-2022. (Pilot Project #5). The Agency will share the results of the assessment with AFGE within 30 days of its completion of the assessment.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Normal, Indent: Left: 0

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [HJ2]: Union to discuss with Agency appropriate length of tie to making decision to go agency-wide

Commented [HJ3]: The purpose of the pilot is to find out whether it is effective

Formatted

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [HJ4]: Agency on 9/16 said sample size too small

Formatted: Space After: 0 pt, Line spacing: single, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75 + Indent at: 1

D. The Agency will require all selection officials, participants in hiring panels, trainers and leaders who provide professional development opportunities to complete the "Diversity, Equity, and Inclusion in the Workplace" certificate program presented by the University of South Florida or an equivalent third-party certificate program. The Agency will establish clear DEIA goals in Agency Recruitment Plans.

E. The Agency will continue to maintain public access to its DEIA Strategic Plan.

F. Annually, the Agency agrees to provide a briefing on applicant flow data to the Union.

G. Agency will establish a policy requiring all existing and expected promotion opportunities to be announced on Talent Hub or its successor.

H. The Agency will provide an equitable, accessible, and inclusive environment for employees with disabilities. The Agency will implement the Federal Government's initiatives to provide people with disabilities equal employment opportunities and take affirmative actions within the Agency to ensure full compliance with applicable laws including Sections 501, 504, and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 794, 794d).

I. The Agency will not tolerate discrimination based on protected class.

J. Employees will not be subject to discrimination based on their sexual orientation, gender identity or gender expression. The Agency will foster a workplace that is an inclusive and respectful environment that invites participation from all people. There will be no tolerance of discrimination, including harassment, based on sex (including pregnancy, sex stereotyping, gender identity, gender expression or transgender status) or sexual orientation. The Agency will foster an environment that recognizes the inherent worth and dignity of every person and group, and embraces diversity, understanding, and mutual respect.

K.

Where feasible and as there are major changes in office buildings, the Agency will consider the provision of gender neutral bathrooms, including provide but not limited to gender neutral bathrooms. At the local level the parties are encouraged to discuss low cost options for gender neutral bathrooms. Where current space allows, the Agency will designate gender neutral bathrooms. As there are changes in office buildings, the Agency will continue to provide for and designate additional gender-neutral bathrooms.

2.1) The Agency will equip at least one (1) conference room per building (with 50 or more employees) provide a multi-use space for the exercise of religious activities and

Formatted: Indent: Left: 0.56 , No bullets or numbering

Formatted: Highlight

Formatted: Indent: Left: 0.5 , Space After: 0 pt, Line spacing: single, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Commented [OPM5]: AFGE
Union is willing to delete this paragraph IF agreement is reached on the Pilot Projects

Formatted: Indent: Left: 0.5 , No bullets or

Commented [OPM6]: AFGE
Agency to consider

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0.5 , Space After: 8 pt, Line spacing: Multiple 1.08 li, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0.5 , Space After: 8 pt, Line spacing: Multiple 1.08 li, No bullets or numbering

Commented [OPM7]: AFGE
Union is willing to delete this paragraph IF agreement is reached on the Pilot Projects

Formatted: Font: (Default) Times New Roman, 12 pt, Strikethrough

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Indent: Left: 0.5 , Space After: 8 pt, Line spacing: Multiple 1.08 li, No bullets or numbering

Formatted: Strikethrough

Formatted: Indent: Left: 0.25 , No bullets or numbering

Commented [BJ8]: not acceptable to union

Formatted: Font color: Custom Color(RGB(33,37,41)), Highlight

Formatted: Indent: Left: 0.5 , No bullets or

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25 + Indent at: 0.5

~~prayer, meditation including yoga, mindful moments, etc. This multi-use space should be large enough to accommodate six (6) to ten (10) individuals, equipped with a door and privacy shades for use in the exercise of religious activities, prayer, meditation, etc. Employees seeking religious accommodations arrangements should contact their Local Reasonable Accommodations Coordinator or and their supervisor. Employees may reserve these rooms using the normal Agency room reservations procedures.~~

Section II. DEIA Reporting and Accountability.

A. Reporting. The Agency will continue to collect all information to support the operation of the EPA Diversity Dashboard (and any successor) and applicant flow data. The Agency will update the Diversity Dashboard monthly. Access to the Diversity Dashboard will be available to all employees.

B. The Agency agrees to provide AFGE Council 238 and the local Presidents the following:

1. Annually provide a copy of the MD-715 report and a briefing explaining the report. The briefing will include discussions on the status of each Region/Office on the state of EEO at the Regional/Office level as well as the Agency.

~~1,2.~~
2. Copy of discrimination and harassment complaints and settlements and harassment claims and settlements including those considered administratively closed, but not limited to 4711 claims. These documents should include the demographic information of the settling employee and the amount of the settlement.

C. The Agency is will planning to create and maintain a Chief Diversity Office (CDO), per the government-wide DEIA strategic plan and the Agency's DEIA Strategic Plan. The CDO will be responsible for implementing the Agency Plan's strategic actions.

~~3.~~
D. Once the CDO is in place, the Agency will notify the Union and include two (2) AFGE representatives on the initiate discussions regarding union membership on an applicable DEIA Executive Committee. The DEIA Executive Committee will:

1. Meet at least quarterly to evaluate the Agency's incorporation of DEIA principles into the bargaining unit experience, including how it is approaching recruitment, hiring, promotion, retention, professional development, performance, pay, Reasonable Accommodations, and training.

~~E.~~
E. Annually the Agency will contract with an independent auditor to evaluate the Agency's efforts to incorporate DEIA principles. The Parties agree to ensure that the auditor is truly independent, the auditor must not have been an employee of the Agency. Further, the auditor may not be employed by the Agency for three years after the date of the evaluation. The independent auditor's findings will be an annual report and included as an attachment to the yearly report above.

Commented [CR9]: Agency
Agency can look at language to consider to see what may be feasible.

Commented [OPM10R9]: AFGE
Union rejects this deletion

Commented [OPM11R9]: AFGE
Agency doesn't see a need for a special set aside here
Agency to work on counter language

Commented [OPM12]: AFGE
Union is willing to delete this paragraph IF agreement is reached on the Pilot Projects

Commented [OPM13]: AFGE
Agency to consider the Regional level

Commented [BJ14]: check w OCR to see if they're willing to do briefing

Commented [OPM15R14]: AFGE
■ Agency...OCR has concerns with drilling data down to Regional/Office level...privacy concerns regarding race/ethnicity
■ R4 has rec'd this info and couldn't identify individuals

Commented [OPM16R14]: AFGE
The Union rejects doing this only on the Agency level.

Commented [OPM17R14]: AFGE
Agency to look into this...Union to provide additional info on what is requested

Commented [CR18]: Agency

Commented [OPM19]: Agency...not a Union action...very private information

Commented [OPM20R19]: Can Agency inquire to OCR, the type of tracking done?

Commented [OPM21R19]: OCR doesn't handle the 4711 claims...Agency has tracking system but are just between

Commented [OPM22R19]: AFGE

Commented [OPM23R19]: AFGE
Union rejects this deletion...see suggested language changes

Commented [OPM24R19]: AFGE
Agency has Privacy Act concerns

Commented [OPM25R19]: AFGE
Union will consider "sculpting" language

Formatted: Indent: Left: 1, No bullets or numbering

Formatted: Indent: Left: 0.5, No bullets or

Formatted: Font: 12 pt

Formatted: Indent: Left: 1, No bullets or numbering

Commented [OPM26]: AFGE

D. Accountability

1. The taskforce will include at least two (2) AFGE representatives. The taskforce will:
 - a. evaluate the Agency's incorporation of DEIA principles into the bargaining unit experience, including how it is approaching recruitment, hiring, promotion, retention, professional development, performance, pay, Reasonable Accommodations, and training;
 - b. develop a yearly report which will be submitted to the Agency Administrator and AFGE Council President regarding efforts to integrate DEIA principles, as outlined in this Article, for Recruitment, Hiring, Promotion, Retention, Professional Development, Performance, Pay, Reasonable Accommodations, and Training. The yearly report shall, at minimum, address how the Agency is:
 - i. conducting outreach to special emphasis communities and working with identified communities, stakeholders, subject matter experts, and leaders and use various data sources to determine viable outreach strategies and metrics to determine success;
 - ii. supporting planning of National Special Emphasis monthly programming from a DEIA perspective;
 - iii. incorporating efforts to recruit, hire and retain diverse candidates;
 - iv. educating, equipping, and empowering employees and management to foster DEIA and an inclusive and equitable workplace, including outreach to employees;
 - v. providing employees with specific training on DEIA; and
 - vi. provide recommendations for improvement to recruitment and hiring processes to ensure diverse candidates are recruited, hired, and retained.
2. Within 60 days after the yearly report has been submitted to the AFGE Council 238 President, the Parties will meet to discuss the report.
3. Annually the Agency will contract with an independent auditor to evaluate the Agency's efforts to incorporate DEIA principles. The Parties agree to ensure that the auditor is truly independent, the auditor must not have been an employee of the Agency. Further, the auditor may not be employed by the Agency for three years after the date of the evaluation. The independent auditor's findings will be an annual report and included as an attachment to the yearly report in Section II paragraph B-1 c.
4. Monthly, each Region and Headquarters office will meet with local AFGE representative(s) to discuss the Agency's efforts to incorporate DEIA principles into recruitment, hiring, promotion, retention,

Commented [OPM27]: AFGE Union willing to delete this section IF sections D and E above is agreed

Commented [OPM28]: Agency to look at how taskforce is set up
What is difference between the DIAC and the taskforce?
What currently exists? Need additional information

Commented [OPM29R28]: Need info from Agency

Commented [OPM30R28]: Agency will arrange briefing to discuss differences between DIAC and DEIA Taskforce

Commented [OPM31]: Agency reluctant to pay another Auditor...Who oversees taskforce, DIAC? Who ensures reporting is being done correctly? Accountability?

Commented [OPM32R31]: FMCS could serve as "independent auditor". AFGE could provide comments and FMCS could mediate disagreement

Commented [OPM33R31]: Agency will come back with something...FMCS doesn't have audit capacity...concern over outside entity auditing the Agency

Commented [CR34R31]: Agency Union does not agree. Agency still has concerns above. Suggests DEIA briefing and then we come back and consider.

~~professional development, performance, pay, Reasonable Accommodations, and training.~~

5.

Section III. Training.

~~A. In addition to the current No FEAR training, no later than ninety (90) days after the effective date of this MCBA, the Agency will implement an interactive, stand-alone, extensive, and detailed. The Agency will provide national mandatory DEIA training for all employees (including managers and political appointees). This training will reinforce the importance of incorporating DEIA principles into every aspect of the Agency's work. Further, the Agency will provide interactive facilitated discussions and exercises dedicated to DEIA at least quarterly at each Region and program office. The Parties agree that conditions of this training are fluid as more is learned about historical oppression and how to educate about experiences of marginalized people as such, this training will be updated regularly but no less than annually.~~

~~A.B. The Agency will maintain DEIA self-paced trainings and webinars in its a learning management system that are available to all staff (e.g., workplace harassment, conflict resolution, understanding of implicit and unconscious bias). The Agency will continue to maintain an intranet page accessible by all employees listing relevant DEIA trainings available for procurement by individual offices and regions. The Agency will make available funding for procurement of DEIA training listed on the Agency's web page (e.g., respectful and inclusive workplaces, cultural differences, intergenerational communication).~~

~~The Agency will survey the AAships and regions and review Fed Talent offerings to compile existing interactive DEIA learning activities. The Agency will then produce a list of interactive training addressing DEIA topics to be shared with agency employees. The Agency survey will include a search for the following topics:~~

~~B. The Agency will commit to provide training on the following topics/subjects:~~

- ~~1. promoting respectful and inclusive workplaces;~~
- ~~2. eliminating workplace harassment;~~
- ~~3. understanding cultural differences;~~
- ~~4. conflict resolution;~~
- ~~5. expanded intergenerational communication; and~~
- ~~6. increase its understanding of implicit and unconscious bias.~~

~~The Agency will provide multi-level leadership accountability in annual performance reviews and annual training to further DEIA data-driven decision making.~~

Section IV. Pay Equity.

~~A. The Agency will follow OPM pay settings. The Agency-Parties agree the issuance of will review Government-wide regulations and guidance to address consistent with applicable law, and will address any pay inequities and advance equal pay will result in an amendment to this MCBA to be negotiated in accordance with the Midterm Article. with regard to with consideration of the following:~~

Commented [OPM35]: Can be built into Local/Regional "housekeeping" meeting.
Agency to add language to set expectations

Commented [CR36R35]: Agency Union wants to encourage these discussions. Union to consider "encourage" language.

Commented [OPM37]: AFGE Union not willing to accept deletion or counter until Agency provides DEIA/DIAC briefing as promised June 29, 2022

Commented [OPM38]: Agency just developed DEIA training

Commented [OPM39R38]: AFGE wants to see/hear about this training

Commented [OPM40R38]: Agency will provide notice and briefing

Commented [OPM41R38]: AFGE Union added language based on briefing Union is looking for more in the training we were briefed on...could be conveyed in announcement message, etc.

- DEIA was not defined.
- There was no mention of the DEIA EO
- There was no mention of why DEIA principles will be incorporated into EPA's workplace.
- There was no mention of what steps EPA will or plans to take in order to achieve DEIA principles.
- The focus of the training was defining the types of bias. However, there was no discussion as to how bias affects DEIA.
- There were not examples of what will be done in the workplace to make an effort to change the current status.

Commented [OPM42]: <https://work.epa.gov/deia/deia-promising-practice-survey-2021>

Commented [BJ43]: this language was gone from union proposal

Commented [OM44R43]: AFGE

Commented [CR45]: Agency

Commented [OPM46]: Why is this in the "Training" section?

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted

Commented [BJ47]: EPA: who is supposed to take this training?

Commented [OPM48]: AFGE Strategic plan states CJEs for SESers...Joyce to confirm

Commented [BJ49]: AFGE to provide add'l language on applicant salary history....

Commented [OPM50]: AFGE Union accepts this language

Commented [OPM51R50]: AFGE
Union previously agreed to this language?? Why is it
deleted

Commented [OPM52R50]: AFGE
Agency to review
<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/15/executive-order-on-advancing-economy-efficiency-and-effectiveness-in-federal-contracting-by-promoting-pay-equity-and-transparency/>

Commented [BJ53R50]: Agency reviewed EO

Career Ladder Promotions

Section I. Career Ladder Promotions

- A. The Agency will provide appropriate opportunities for employees to develop and advance in their careers.
- B. Employees in career ladder positions will be given adequate opportunity to reach the full potential of their assigned career ladders. Management will provide work assignments, and/or training **necessary** for employee development and experience. Conditions prescribed by law and regulation (including 5 CFR § 335.104, eligibility for career ladder promotions) must be satisfied for an employee to be eligible for a career ladder promotion. Upon placing an employee in a career ladder position, the supervisor will discuss and counsel the employee on the job requirements and expectations for the employee to reach the next higher level. The supervisor will hold these discussions at each level of the employee's progression and at mid and end of year performance reviews within the career ladder.
- C. Lack of availability of work at the higher grade level may not prevent a career ladder promotion.
- D. The following conditions must be satisfied for an employee to be eligible for a career ladder promotion:
 - 1. The employee's performance demonstrates the ability to perform the duties of the next higher grade level;
 - 2. The employee has completed the minimum waiting period in the lower-graded position (52-week period pursuant to 5 CFR § 300.604); and
 - 3. Pursuant to 5 CFR § 335.104, no employee shall receive a career ladder promotion unless their current rating of record under part 430 of this chapter is "Effective" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Effective" on a critical element that is also critical to performance at the next higher grade of the career ladder.
- E. If the supervisor decides not to promote the employee, the supervisor will communicate to the employee in writing no more than 5 work-days after the **decision is communicated to Shared Service Center but no later than** the career ladder eligibility date. The supervisor must explain why they determined the employee is not entitled to the promotion and how the employee must improve their to be granted the career ladder promotion.
- F. If the supervisor determines to promote the employee, the supervisor will submit the necessary personnel action early enough to process the promotion within the

first pay period of the employee meeting time in grade requirements. If the Agency fails to process the promotion within the first pay period of the employee meeting time in grade requirements, the Agency will automatically provide the employee (or their representative) with a settlement agreement for retroactive pay. Parties may meet to discuss potential settlement.

Section II. Developmental Details

Agency leadership recognizes that opportunities for professional growth and development are needed for all employees. Developmental Details and other career development tools are investments in the future of employees and the Agency. The purpose of Developmental Details is to offer temporary assignments aimed at providing flexible cross training, improved networking and collaboration, skills development, and knowledge-sharing opportunities for employees.

A Developmental Detail is a voluntary opportunity where interested employees can participate in a short-term developmental assignment, special project or shadowing. Such developmental details can be up to 120 days. They can be on a full-time or parttime basis and are not competed.

Developmental Details allow employees to develop skills based on their career development needs and goals. These Developmental Details can promote diversity and inclusion across the Agency and provide knowledge/skills transfer.

These Developmental Details are open to all permanent employees in all grade levels and job classifications. Participants must have had at least a fully successful performance rating during the last performance period. Supervisors and employees should work cooperatively to identify meaningful Developmental Details and discuss these opportunities at any time. The Agency will promote the Developmental Detail program with employees and managers.

All supervisors should emphasize the importance of employee career development, including Developmental Details during mid-year and end-of-year performance review meetings. Skills or experience needs, professional development goals, and Individual Development Plans (IDPs) should be considered when identifying possible Developmental Details during these discussions. Employees may explore and discuss possible opportunities with other employees and supervisors, while maintaining communication with their supervisors. Both the home and host offices need to agree on a Developmental Detail. If an opportunity is identified in another division, Deputy Directors will serve as brokers/facilitators for Developmental Details.

While Developmental Details may not be approved at the requested time, employees and supervisors should continue to work closely to identify mutually agreeable goals and timeframes. Developmental Details are typically limited to one per year. Specifics regarding the duration, location, and duties may vary depending upon the employee, the project, and Agency needs and resources.

Section III. Career Ladder Promotions Adjustment

The goal of this Article is to amend upward career ladder positions where the qualifications support the next higher grade.

Current Agency positions that are career ladder to the GS 12 ceiling shall be amended to GS 13 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 12 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 12 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 12 pool of employees in each Office/Division; and
Year 4 – all remaining GS 12 employees with time in grade eligibility in each Office/Division will be promoted.

Current Agency positions that are career ladder to the GS 13 ceiling shall be amended to GS 14 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 13 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 13 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 13 pool of employees in each Office/Division; and
Year 4 – all remaining GS 13 employees with time in grade eligibility in each Office/Division will be promoted.

Current Agency positions that are career ladder to the GS 14 ceiling shall be amended to GS 15 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 14 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 14 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 14 pool of employees in each Office/Division; and
Year 4 – all remaining GS 14 employees with time in grade eligibility in each Office/Division will be promoted.

To apply for the above, employees must have achieved the top of the career ladder (GS 12, 13 or 14 level, respectively) for at least three (3) years at the Agency and at least have achieved an “effective” performance rating (or equivalent) for three years (3). Individuals will nominate themselves for consideration by submitting a federal style resume to their Office/Division Director. The Office/Division will create a panel of equal numbers of bargaining unit employees and non-bargaining unit employees that work within the Division. The panel will review resumes, conduct interviews and rank applicants. The Office/Division Director will make the final decision regarding selections considering the ranking of the panel and promote the highest ranking applicant(s).

Section IV. National Experts and Technical Authorities

- A. Within 60 days from the effective date of this Article and every fiscal year thereafter, the Agency shall provide to the Union no later than October 1st a list of:
1. National Experts and Technical Authorities within the Agency;
 2. Expected vacancies in National Experts and Technical Authorities positions in the upcoming fiscal year; and
 3. Planned newly created National Experts and Technical Authorities positions to be announced within the next fiscal year.
- B. The procedures used in identifying areas that will be considered for National Experts and Technical Authorities shall not be limited by Agency funding constraints.
- C. All actions taken to fill National Experts and Technical Authorities positions will comply with the Merit Promotion section of this Article. The Agency shall apply competitive procedures to all National Experts and Technical Authorities vacancies.
- D. The minimum area of consideration for National Expert and Technical Authorities positions shall be the local commuting area of the Office/Region. Announcements for positions shall follow the requirements in the Promotions Article of this MCBA.
- E. Any employee who applied and is not selected for a National Expert and Technical Authorities position is entitled to the following information upon request:
1. Employee eligibility and ranking;
 2. Whether the Employee was referred and was one of those in the group from which the selection was made;
 3. Any deficiencies which prevented selection;
 4. Additional training, experience, etc. which would improve employee's qualification for National Experts and Technical Authorities position; and
 5. Who was selected for the position.

Union Rights Article

Section I: General Provisions

- A. Employees shall be protected from restraint, interference, or coercion, in the legitimate exercise of their rights and responsibilities as designated representatives of the Union.
- B. Within the confines of laws, rules, and this Master Collective Bargaining Agreement (MCBA), the Union has the right to designate representatives of its own choosing.
- C. No Recording Protected Union Activity: Except as provided in this MCBA, no recording will be made without mutual consent of any conversation involving Union activity
- D. Bargaining unit employees, including employees serving as Union representatives, have the following rights:
1. to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right;
 2. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
 3. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.
- E. The Union has the right and obligation to represent all employees in the unit. The Union has the right to present its views to the Agency regarding grievances, working conditions, and conditions of employment and matters of concern, either orally or in writing. The Agency will advise employees of their right to representation consistent with this MCBA.
1. The Local President or designee will be notified of such meetings.
 2. For meetings where the employee is not represented by the Union when the employee is faced with the prospect of an Agency-initiated adverse action (including all suspensions and more severe actions) the Union retains has the right to receive the documents demonstrating that the Agency has abided by the procedural requirements of the Discipline and Adverse Action Article of the MCBA upon request. Further, the union has the right to receive copies of settlements to ensure consistent treatment among employees.
 3. Settlement agreements shall be sent to the Local President via e-mail or a similar means that permits verification of receipt.

Commented [BJ1]: EPA: 5 USC 7103

Commented [HJ2R1]: 14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

Commented [HJ3R1]: White House Task Force on Worker Organizing and Empowerment, Report to the President, Recommendation 1, p.17 ("[W]hen federal employees organize a union, they should have an effective voice in workplace issues through their union and federal management should work closely with these unions to solve workplace issues in a manner that advances agencies' missions and produces high-performance workplaces.")

Commented [CR4R1]: What "workplace issues" expand not covered by "working conditions and conditions of employment?"

Unions cannot attend regular performance assessment ...

Commented [OPM(5R1): AFGE
For example, the Union may have concerns regarding security issues...while not negotiable, the Union still has t ...

Formatted: Highlight

Commented [OPM6]: AFGE
From Employee Rights as agreed on 01-26-2023

Commented [CR7R6]: Agency:

Union suggests this get its own letter because it covers ...

Commented [CR8R6]: Agency:

Union concerned this language does not include potentia ...

Commented [OPM(9R6): AFGE
Union accept deletion of the first part of this section, but reinserted this language

Formatted: Indent: Left: 0.5 , No bullets or

Commented [CR10]: Agency:
Suggest we put this in a "Definitions" Article.

Commented [OPM(11R10): AFGE
Union can accept deletion of 2nd part of paragraph IF agreement on first part of paragraph and "sent" is explain ...

4.F. ~~Any challenges by the Union to EEO settlement agreements will be filed with the EPA Office of Civil Rights. The parties agree that all EEO complaint and settlement information must be kept confidential.~~

G. New Employee Onboarding

- 5.1. The Union will be afforded the opportunity to participate in the onboarding process for bargaining unit employees.
 2. The Union will be given an opportunity to address new employees at these sessions for up to ~~thirty (30)~~ ten (10) minutes. ~~No Agency representatives will be present during the period of time that the Union representative(s) meet with the employees.~~
 3. The Union may provide employees with ~~appropriate~~ union-related materials either hard copy or electronically.
 4. The Parties agree that further details will be subject to local bargaining. At a minimum, the Agency agrees to the following:
- 6.5. When new employee onboarding sessions for new employees are scheduled by the Regional office or the Shared Service Center, the appropriate Local(s) will be given notice ten (10) workdays prior to the session. The notice to the appropriate Local(s) will include the number of employees who are expected to attend the orientation.
6. Prior to the scheduled reporting date of prospective employees, the Local President will be provided information electronically regarding prospective employees. The information provided will contain, at a minimum, prospective employees' names, position titles, divisions, reporting dates, official duty station and grades, but will be sanitized to conform to the requirements of the Privacy Act.
7. ~~If an employee will not be included in a group onboarding session, the appropriate Local will be afforded thirty (30) minutes to provide the employee a one-on-one employee for a Union onboarding session. If no onboarding session is held, an employee is not included in a group onboarding session or the Local did not receive notification under subsection 1B as explained above, the appropriate Local will be afforded thirty (30) minutes to meet with the employee during duty time.~~
8. The Agency will include on its employee onboarding web pages, links to the following: with its commitment letters the following AFGE links or their equivalent:
www.Joinafge.org
www.afge.org
www.afge238.org
<https://intranet.epa.gov/ohr/emprelations/>
9. The Agency will maintain a prominent up-to-date link to AFGE MCBA, AFGE/EPA MOUs and relevant AFGE contacts on the EPA at Work web pages

Formatted

Commented [CR12]: Agency:

This is not a procedural option we are aware of.

Commented [OPM(13R12)]: AFGE
Union to research

Commented [OPM(14)]: AFGE
What do other organization get? ...up to 30

Commented [OPM(15)]: AFGE
Employees could feel intimidated with management there

Formatted: Font: (Default) Times New Roman, 12 pt,
Font color: Text 1

Formatted: List Paragraph, Outline numbered + Level:
2 + Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75 + Indent at: 1

Formatted: Indent: Left: 0.94

Commented [CR16]: Agency:
Ask SMEs about notice possibility.

Commented [OPM(17R16)]: AFGE
Union awaiting response about notice possibility

Commented [CR18]: Agency:
Talk to SMEs about whether we can alert the Unions to who
will attend these meetings.

Commented [OPM(19R18)]: AFGE
Information is compiled and sent anyway...include AFGE on
the group mailing..
https://usepa-my.sharepoint.com/:u:/g/personal/paff_patricia_epa_gov/EGS8fSyOmlOnxdKwDqubvcBlz_z8A2ZCn1VOhhPxHr-xw

Commented [HJ20]: VP task force
Contact information:

"OPM should release guidance encouraging agencies to periodically inform bargaining unit employees of their legal rights under federal labor law, including their right to join a union and provide contact information for the union's designated representative."

Commented [OPM21R20]: AFGE
Agency looking into this...exploring linking to internal intranet page w/union reps

Commented [CR22R20]: Agency

We distribute contact information of BUEs regularly. Can this be used to send out this information and avoid our legal concerns?

Commented [OPM(23R20)]: AFGE
The Agency must include the links on
<https://www.epa.gov/careers/forms-you-will-need-bring-your-first-day-working-epa>

~~including Region/Office specific pages. The Agency will maintain an up-to-date intranet site with AFGE contact information. The Agency will maintain an intranet link in the first drop-down menu of the EPA@Work site (or its successor) of the current AFGE MCBA and AFGE contact information, and relevant AFGE contacts on the home page of every regional or office EPA intranet site.~~

~~10.9.~~ The Office of Human Resources will notify the Union of any employee being hired into or transferring into a bargaining unit office, or any employee being removed from the bargaining unit list (Labor Movement Report). This information will be provided electronically on a biweekly basis and include a list of the names of all new or transferred employees including:

- a. Their positions, work locations, divisions, email address, phone number, and supervisor;
- b. Whether the employee is on a full time, part-time, seasonal, or intermittent work schedule;
- c. Whether the employee is serving on a term, temporary, career, career-conditional, or excepted appointment;
- d. The geographic locality of each employee that is used to determine the appropriate locality pay;
- e. The grade and step and pay structure; and
- f. For employees being removed from the bargaining unit list, the reason for their removal.
- g. For employees leaving the Agency, whether the employee was retired or separated from the Agency;
- h. Whether the employee is continuing to be carried in non-duty status;

i.

F. Weingarten Rights

~~1. Agency or the Inspector General shall inform the Union three days in advance on any meeting if Weingarten Rights will be read.~~

~~2. Security clearance meetings shall be covered by Weingarten Rights.~~

~~The Agency shall inform the Union when an employee is subject to a security clearance inquiry. Such notice will include the identification of the employee. The Union will have the right to attend security clearance meetings.~~

Section II: Formal Discussions

A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit of their representation concerning any grievance or any personnel policy or practices or other general conditions of employment.

B. To the extent not prohibited by law, the Union may elect to attend EEO complaint settlement meetings when sufficient elements of formality are present, unless the complainant requests that the union not attend. In those cases, the Union is not entitled to

Commented [BJ24]: EPA: covered in Employee Rights

Commented [CR25R24]: Agency:

Union to propose language re more prominent placement of Union lists. Agency interested in considering.

Commented [CR26R24]: Agency:

Still looking at this but erasing for now for clarity.

Commented [OPM(27R24): AFGE
Union wants link on main page see R9

Commented [CR28]: Agency:

The current BUE movement report does not include this information. Not sure whether a report can be generated including this information, but the agency will look into whether such a report can be generated or included into the report.

Commented [CR29R28]: Agency:

Ok with a. Looking into b., but deleting for now.

Commented [OPM(30R28): AFGE
Union believes this report is called the hires and separations report?

Formatted: Indent: Left: 1, No bullets or numbering

Commented [OPM31]: AFGE

Agency stated the Union doesn't have a right to this information. The employee can involve the union.

Commented [CR32R31]: Weingarten is covered by Employee Rights.

Formatted

Commented [CR33]: Agency:

Internal security procedures are not negotiable, and we may not even know when this happens. It may come from a third party.

Commented [OPM(34R33): AFGE

The Union needs to information their BUEs that security clearance meetings may be Weingarten meetings and BUEs can have representation

https://chcoc.gov/sites/default/files/Union-Representation_508.pdf

Commented [CR35]: Agency:

Union to consider whether this is considered under the Employee Rights Article – this section was written with an eye towards the broader Union Rights associated with Formal Discussions.

Agency reread Employee Rights and noticed this was not directly addressed as we initially conveyed. Proposing

attend such meetings. The parties agree that all EEO complaint and settlement information must be kept confidential.

C. The parties agree advanced notice of formal discussions is beneficial and conducive to effective meetings. As such:

~~B.~~

~~C.~~ For regularly scheduled formal discussions, the notice and a meeting agenda will be provided no less than five (5) workdays in advance. Designation of the Union's meeting representative and the reporting of the Union Representative's time will be in accordance with the Official Time Provision of this MCBA.

~~D.~~ For non-recurring formal discussions, the Union will be provided with reasonable notice (i.e., generally not less than ~~five (5)~~ three (3) workdays notice) unless circumstances preclude such notice. Where a shorter notice period is necessary, the Agency will notify the Union as soon as practicable that a formal discussion will be conducted.

1. Formal discussion other than all hands meetings will be scheduled when a Union Representative is available. The Union and managers are encouraged to discuss possible ways to resolve scheduling conflicts.

~~E.D.~~ Notice to the Union of a formal discussion will be sufficient if provided to the designated Union point of contact (in accordance with the Recognition and Unit Description article) and includes the general subject of the discussion and the location and time of the discussion.

~~F.~~ The Agency will identify the Union announce the name of the Representative in the meeting (if any) at the beginning of the meeting. The AFGC Representative may introduce themselves as a Union representative and provide contact information. The representative may ask relevant questions and may make statements, including the Union's position with respect to the subject of the discussion.

~~G.E.~~ Any ~~minutes and~~ presentation documents prepared by the Agency for the meeting and shared with bargaining unit employees will be provided to the Local president who received the notice. ~~This does not obligate the Agency to take minutes of the meeting or prepare documents for the presentation.~~

Section III: Labor Recognition Week Public Service Recognition Week

Formatted: List Paragraph, No bullets or numbering.
Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Formatted: List Paragraph, No bullets or numbering.
Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Formatted: Indent Left: 1 , No bullets or numbering

Formatted: List Paragraph, No bullets or numbering.
Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25 + Indent at: 0.5

Commented [CR36]: Agency:
We haven't had timelines in the past on these. Why are they needed now?

Commented [OPM(37R36): AFGC
The timelines are need to AFGC can manage its calendars...juggling between AFGC representational duties and Agency mission related work. Agency is currently providing notice for "regularly scheduled" meetings.

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Indent Left: 0.5 , No bullets or

Formatted: Indent Left: 0

Commented [CR38]: Agency:
Agency concerned about all hands meetings getting held

Commented [HJ39]: Looked this up- it looks like an nteu event, but not sponsored by an agency. What about pub

Commented [BJ40]: EPA: can't favor one union over another

Commented [OPM41R40]: AFGC
Agency recognize Public Service Recognition Week

Commented [CR42R40]: Agency:

A. During the first week of May each calendar year, every AFGE Local will be permitted to have a one (1) hour meeting during duty time with the bargaining unit to present training on general labor matters.

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25 + Indent at: 0.5

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Section IV: ~~Agency Publications~~ Communications ~~IV. Information Sharing~~

Commented [BJ43]: EPA: can't materially support a union like this.

The Union shall have the opportunity to submit information to be published in Agency newsletters, routine emails such as This Week at EPA, electronic bulletin boards and the opportunity to present information at All Hands meetings.

Commented [CR44]: AFGE: Union to provide examples of what they are referring to here. The Union notes DRAs issue newsletters. Agency to consider alternatives.

Section V: Agency/Union Annual Meeting

The Agency shall meet annually with its Unions including Council 238 in March of each year to review and discuss and explain its budget, annual business and staffing plans and any transition/reorganization issues. A copy of the initial approved budget, a full description of each line item and the annual financial operating guidelines will be provided during this meeting. Thereafter, upon request and/or when the budget is revised, the Agency will provide additional Agency-wide budget briefings meetings to clarify any questions. Council 238. These meetings shall be conducted on official time, and will include any changes and/or reprogramming of funds to the annual budget.

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Section V: Surveys

- A. Prior to surveying bargaining unit employees, the Employer Agency will provide the Union with a copy of the survey document at least five (5) business days in advance and allow the Union an opportunity to comment on it. The Union will receive a copy of any survey results including the underlying raw data obtained unless there are privacy concerns. In the event there are privacy concerns, the Agency will provide the Union with an explanation of those concerns and discuss how best to share the results. A copy of any local survey, which is intended to be distributed to bargaining unit employees by the Agency, will be provided to the appropriate Union Local for comment at least fifteen (15) days in advance of distribution to bargaining unit employees.

Commented [CR45]: Agency:

Union to come back with something

Commented [OPM46R45]: AFGE
Union willing to agree this is not an exclusive meeting with AFGE

Commented [CR47R45]: Agency:

This is based on an NTEU contract with IRS. Many Treasury dep't union can negotiate over salary, so budget may be relevant, but is not at EPA.

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Commented [CR48]: Agency:

We often don't have the raw data and are unclear why it would be needed.

Union expressed concerns about agency spin on issues. The Agency is ok with sharing #s, but not "raw data" like with employee names etc. Parties to consider.

Commented [OPM(49R48): AFGE
Union awaits Agency response to this

Formatted: Indent: Left: 0.5 , No bullets or

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted

Section VII: Communication, ~~and Information Sharing, and Information-~~ Requests

- A. The Union shall have the right to communicate with Bargaining Unit employees. In accordance with GSA and Agency facilities and cybersecurity rules, regulations, and policies, the Union may use Agency email systems, physical and electronic bulletin boards, desk drops, phones, signage etc., to communicate with employees.

~~Surveys~~ Prior to surveying bargaining unit employees regarding conditions of employment, the Agency will provide the Union with a copy of the survey document

~~generally three (3) business days in advance and allow the Union an opportunity to comment on it. The Union may, upon request, receive a copy of survey results obtained unless there are privacy concerns. If requested by the Union, the Agency will provide the Union with an explanation of privacy concerns.~~

~~B.~~

~~B.C.~~ The Agency shall annually inform the employees of their right to Union representation. The Union has a right to inform employees of their right to Union representation.

~~The Office of Human Resources Agency will notify the Union of any employee being hired into or transferring into a bargaining unit office, or any employee being removed from the bargaining unit list. This information will be provided electronically on a biweekly basis and include a list of the names of all new or transferred employees including:~~

- ~~— Their positions, work locations, divisions, email address, phone number, and supervisor;~~
 - ~~— Whether the employee is on a full time, part-time, seasonal, or intermittent work schedule;~~
 - ~~— Whether the employee is serving on a term, temporary, career, career conditional, or excepted appointment;~~
 - ~~— The geographic locality of each employee that is used to determine the appropriate locality pay;~~
 - ~~— The grade and step and pay structure;~~
 - ~~— For employees being removed from the bargaining unit list, the reason for their removal; and~~
- ~~1. Employees separating from the agency.~~

~~C.D.~~ Information Requests

- ~~1. Upon receipt of an information request from AFGE, the Agency will notify the Union of the Labor Relations Office assigned the request, including the contact information of the Labor Relations Specialist responsible for complying with the request.~~
- ~~2.1~~ Union information requests must be sent to Agency representatives (or their designees) according to the contacts identified in the Recognition and Unit Description Article.
- ~~2.~~ The Agency will normally inform the Union within five (5) work days of receipt of an information request that it has received the request. whether information requested under 5 USC § 7114(b)(4) will be supplied and if the Agency intends to respond by the due date identified in the request. If the Agency anticipates it cannot meet the five (5) day timeframe, it will contact the Local Union Representative who filed the request to discuss the request, including any issues with responding to the request (e.g., if the Union has provided a particularized need)
3. Upon request by ~~the Union~~ by either the party, the parties will meet to discuss the

Commented [CR50]: Agency:

We often don't have the raw data and are unclear why it would be needed.

Union expressed concerns about agency spin on issues. The Agency is ok with sharing #s, but not "raw data" like with employee names etc. Parties to consider.

Formatted: List Paragraph, No bullets or numbering, Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Formatted

Formatted

Commented [CR51]: Agency:

Union interested in reason for the separation – retirement vs. separation. Agency expressed concerns over privacy.

Commented [OPM(52R51): AFGE
Entire section covered above

Formatted: Indent: Left: 1 , No bullets or numbering

Commented [CR53]: Agency:

Not sure why this is needed. Could get confusing.

- status of the request and challenges or concerns with obtaining the information.
4. ~~The Agency will comply with its statutory obligation to respond to requests in a reasonable amount of time. If the Agency cannot meet the five (5) day timeframe, it will contact the Local Representative who filed the request to discuss the request, including any issues with responding to the request (e.g., if the Union has provided a particularized need).~~
 5. The Agency will respond to information requests in a similar manner to the numbering or subject matter designations used in the original request.

~~D.E.~~ The Agency will provide a notice of completion and link to any final versions of Agency Orders, Directives, Manuals and issuances relating to personnel policies, practices, procedures and matters affecting working conditions.

~~E.F.~~ Annually, the Human Capital Officer of the Agency or designee, will provide AFGE at the national level with electronic organizational charts for each organizational unit showing the chain of command.

~~F.G.~~ The Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:

1. Is normally maintained by Management during the regular course of business;
2. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
3. Does not constitute guidance, advice, counsel or training provided for management officials or supervisors related to collective bargaining.
4. Information requested will be provided to the Union within a reasonable time. The Agency will respond to an information request so that the information is received by the Union in a timely manner for the Union to use for the expressed purpose.
5. This information request authority does not impact in any way the separate authority the Union holds to request information ~~under the statute.~~

H. "Particularized Need" as interpreted by the FLRA is met when:

1. The Union has stated why it needs the information;
2. How it will use the information; and
3. How its use of the information relates to carrying out its representational responsibilities under the Statute.

Section VIII. Representatives and Official Time

Formatted: Indent: Left: 1 , No bullets or numbering

Commented [OPM54]: AFGE
Why is this problematic?

Commented [OPM55R54]: AFGE
Union ok to delete IF B 4&5 accepted

Commented [CR56R54]: Agency:
They are unrelated and 4 & 5 were already negotiated thoroughly.

Commented [CR57]: Agency:
Agency sees this as part of midterm. If it's non-negotiable we wouldn't have share it.

Commented [OPM(58R57): AFGE
Bob...we are looking for FINAL copies of things. It is not uncommon for us not to get notice of completion. How does the Agency distinguish editorial changes but the Union views as substantive.

Commented [CR59]: Agency:
These are available online.

Commented [OPM60R59]: AFGE
These are not available for every office within EPA...want this provided once a year...down to the Section level

Commented [CR61R59]: Agency:
The agency fully intends to keep org charts up to date and the Union aware of reorgs.

Commented [OPM(62R59): AFGE
Great! This should not be a problem then

Commented [CR63]: Agency:
This just recites the legal standard, cutting out particularized need. This would grind the agency to a halt. There are reasons we have the particularized need legal standard to ensure the agency can function, and to ensure employee privacy.

Commented [OPM64R63]: AFGE
Union researching

Commented [CR65R63]: Agency:
This recites the statute and has created a lot of confusion

Commented [OPM(66R63): AFGE
See Union additional language

Formatted: Font color: Black

Formatted: Indent: Left: 1 , No bullets or numbering

Formatted

Formatted: Indent: Left: 0.5 , First line: 0.5

Commented [OPM67]: AFGE
agree to delete

A. The Parties share the responsibility to ensure that official time is used effectively, efficiently, and is appropriately accounted for. Subject to this MCBA, the use of approved time by a Union Representative in the conduct of their representational duties shall be charged to official time.

B. Whenever the term "Representative" is used in this Article, it shall include those identified per the Recognition and Unit Description Article, including any retirees designated by the Union. Retirees are subject to all security policies and procedures applicable to non-EPA employees entering Agency workspace. Local Presidents, Local Vice Presidents, Chief Stewards, Assistant Chief Stewards and any other employees authorized by the Union in advance to act on its behalf.

B. The Union may designate Representatives to act on its behalf. Nothing in this Article prevents a union representative from requesting official time for a matter involving a geographical location different from their Official Work Location, in accordance with the following:

C. Each AFGE Local shall be authorized to appoint and assign Representatives as the Local deems appropriate. There is no limit on the number of employees who may serve as Representatives. The number of representatives should be generally proportionate to the number of employees represented. All Representatives must be bargaining unit employees or Agency retirees in good standing. Retirees serving as Representatives are subject to all security policies and procedures applicable to non-EPA employees entering Agency workspace.

1. The Union shall make the sole determination as to where its Representatives may best be used (e.g., across the Council and/or sharing between Locals).

D.

C.E. Official time shall be granted for only the following meetings and activities: In accordance with 5 USC 7131(d), Union Representatives shall be may be granted eligible for official time for when acting in a representational capacity, participation in meetings with the Agency and any other activities as reasonable and necessary, and in the public interest. This includes requests for training at the local and national levels, in accordance with applicable law, rules and regulations, described below (including official time to travel to and from such meetings as specified in this MCBA).

1.

D. Employees expressly designated by the Union shall be allowed official time as Union Representatives for as provided under 5 U.S.C. 7102, including other matters reasonable, necessary, and in the public interest.

F. The use of official time is may be appropriate for use by employees who are Union Representatives for attending Union sponsored trainings, meetings, conferences etc., if agreed to by the parties. The use of official time including attending union sponsored training by

Commented [CR68]: Agency:
If we cannot define who representatives are, then we cannot reach an agreement on official time.

Commented [BJ69]: Parties think will work with unit recognition definition

Formatted: Font color: Auto

Formatted: List Paragraph, No bullets or numbering, Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Commented [BJ70]: [10:27 AM] Owens Powell, Marie (she/her/hers)

1.

1. The Union shall make the sole determination as to where its Representatives may best be used (e.g., across the Council and/or sharing between Locals).

Formatted: Outline numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25 + Indent at: 0.5

Commented [CR71]: Agency:

We do not intend to tell the Union how to organize itself, but we do not want to encourage the idea of limitless Representatives.

Commented [OPM72R71]: AFGE
Union suggests remaining silent. The issues will determine the # of representatives

Formatted: Indent: Left: 0.75 , Border: Top: (No border), Bottom: (No border), Left: (No border), Right: (No border), Between : (No border)

Commented [CR73]: Agency:

Union concerned it does not include specificity about grievance representations.

Commented [BJ74R73]:

Formatted: Not Highlight

Formatted: Not Highlight

Commented [BJ75]: Agency: added this instead of union's provision below about training

Commented [CR76]: Agency:

How are they expressly designated? We have a paragraph ...

Commented [CR77]: Agency: ...

Commented [OPM78R77]: AFGE
Union ok with deleting IF agreement on paragraph above

Formatted ...

~~bargaining unit employees who are Union representatives at the local level is an appropriate matter for local level discussions and/or bargaining. Existing procedures will be maintained.~~

~~E.~~

- F. Notwithstanding any other provision in this Agreement, any activities performed by Union Representatives relating to the internal business of the Union shall be performed during the time the Representatives are in nonduty status.

- G. The AFGE Council 238 President and the Executive Vice President shall be granted 100% use of official time.

1. When employees are newly elected or appointed to the position of President or Executive Vice President of Council 238, the Union will notify the Agency.
2. When a President or Executive Vice President official leaves office, they will have a right to return to work in their position of record.

H. In the event the position of record no longer exists, they shall be assigned to a comparable position at the Agency in the same locality and commuting area to the extent possible.

~~Full Time Five 100% official time positions will be maintained at Headquarters, and one 100% official time position will be maintained in Region 5, for local level union officials. These shall be in accordance with existing local MOUs and agreements. They will be negotiated at the local level at the request of either Party. The Parties agree the following are reasonable:~~

- I. Past practices regarding official time for AFGE officers in place as of January 1, 2018 will be reestablished. For all other regions/offices, official time will be:

1. The equivalent of 50% Representative for up to 200 BUEs;
2. The equivalent of one (1) full time Representative for up to 600 BUEs; and
3. The equivalent of one (1) additional full time Representative for each additional 600 BUE or fraction thereof.

- J. Official time for AFGE officers covered above will be recorded on the Agency time and attendance system (currently PeoplePlus).

- i. Locals that represent up to 200 bargaining unit employees will have one half (1/2) time Representative.
- ii. Locals that represent between 201 and 500 bargaining unit employees will have one (1) full time Representative.
- iii. Locals that represent 501 to 900 bargaining unit employees will have two (2) full time Representatives.
- iv. Locals that represent 901 to 1,200 bargaining unit employees will have three (3) full time Representatives.
- v. Locals that represent 1,201 to 1,600 bargaining unit employees will have four (4) full time Representatives.
- vi. Locals that represent more than 1,601 bargaining unit employees will have five (5) full time Representatives. Present practices will be maintained.

Commented [BJ79]: Agency: the only training is the national training

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: No bullets or numbering

Commented [BJ80]: Agency: redundant

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 7 + Alignment: Left + Aligned at: 0.5 + Indent at: 0.75

Commented [CR81]: Agency:

Union interested in discussing locality etc. Agency concerned if the organization moved, then the employee would have to move. Union to propose language.

Formatted: Highlight

Formatted: Indent: Left: 1.25 , No bullets or numbering

Commented [BJ82]: Agency: we can add other existing agreements too

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 7 + Alignment: Left + Aligned at: 0.5 + Indent at: 0.75

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1 + Indent at: 1.25

Commented [CR83]: Agency:

Sometimes these numbers may be justifiable, and sometimes they won't. Better to leave it to the locals to figure out.

Commented [OPM84R83]: AFGE Union has seen the Regions to be uncooperative

Commented [OPM85R83]: AFGE Union will provide approximate numbers

K. Other AFGE designees may request and receive reasonable and necessary official time to work on specific issues, matters of concern, projects, grievances, etc.

Formatted: Indent: Left: 0.75 , No bullets or numbering

For any situation where the Agency refuses to release a Representative and/or an employee to use official time under this Article, the Agency will provide the Representative and/or the employee with a written explanation for the denial of time (i.e., the reason(s) and/or rationale for the denial, including any data, etc., as appropriate), if requested.

L. Union Representatives designees on Maxiflex will ~~inform request~~ seek approval official time on their MPPTS or email of a screen shot of PeoplePlus when proposing their schedule. Union designees not on Maxiflex will request official time via an email to their supervisor at the beginning of each pay period. No response to the MPPTS, screen shot of PeoplePlus or the email will indicate approval. In limited circumstances it may be necessary for a Union designee to attend to Union related needs on an expedited basis. In those cases, the Union designee will seek approval as soon as practicable. If official time is not granted, the Agency will delay the meeting until such time as a Union designee can be available.

Formatted: Indent: Left: 0.5 , No bullets or

M. For any situation where the Agency disapproves the release of an AFGE designee and/or an employee to use official time under this Article, the Agency will provide the designee and/or the employee with a written explanation for the denial of time (i.e., the reason(s) and/or rationale for the denial, including any data, etc., as appropriate), if requested.

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 13 + Alignment: Left + Aligned at: 0.5 + Indent at: 0.75

Formatted: List Paragraph, No bullets or numbering

Commented [BJ86]: Agency: see how this works with def of representatives

L.N. Overtime and Compensatory Time: Employees serving as Union Representatives may not earn compensatory time or overtime for representational activities. Union Representatives can work overtime or compensatory time to perform Agency work per the Agency Work Schedules Article.

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 13 + Alignment: Left + Aligned at: 0.5 + Indent at: 0.75

M.O. Telework and Remote Work. Union Representatives, who otherwise meet the criteria set forth in the Telework and Remote Work Articles of this MCBA, may perform Union activities while at the Alternate Work Location and/or the Remote Work Location.

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 13 + Alignment: Left + Aligned at: 0.5 + Indent at: 0.75

Section IX. Union Training

A. The use of official time for attending local union-sponsored training by Union Officers and/or designees is an appropriate matter for local level approval. The use of official time for attending national union-sponsored training by Union representatives is an appropriate matter for national level approval.

Commented [BJ87]: Agency to look at ICBA language

Formatted: Indent: Left: 0.5 , No bullets or

Section X. Union Travel and Per Diem

- A. The parties jointly commit to the following principles as the foundation for a productive and cost-effective labor management relationship:
1. When the parties agree, the Agency will pay for Union travel and per diem.
 2. Consistent with this MCBA, the Parties will schedule meetings as efficiently as possible, including consolidating meetings when appropriate and holding certain meetings virtually.
 3. The parties are committed to reducing the amount of travel used for representational activities.

Section XI. Agency Commitments

- ~~A. On the second Thursday of October each year, the Parties will meet to discuss issues for which training of Agency managers, and Union Representatives/Officers and/or designees, and bargaining unit employees, could be beneficial. The Parties may also discuss Unfair Labor Practice, Grievance, 4711 complaint and EEO claim trends identified by either Party. Upon agreement of the Parties, the Parties will jointly provide this training to Agency managers and/or Union Representatives.~~

~~A.~~

Section XII. Union Use of Agency Facilities, Equipment and Resources

- A. ~~Generally, Union use of Agency facilities, equipment and resources is a matter Subject to for local level discussions and bargaining. The Agency will provide office space, and equipment and furniture for the Local Unions. The provision of any Agency controlled facilities, including union office space and equipment, is a matter for local level negotiations, which will consider the effect of remote work or telework on reducing needed space. Such facilities, equipment and resources include but are not limited to secure office space, electronic and regular mailboxes, telephones, smart phones, bulletin boards, meeting rooms, office equipment (including a desk and chairs), office supplies, internet access, IT support, and access to review laws, rules and regulations as the Agency maintains. Existing agreements are maintained. Every AFGE Local will be provided with an office for use by the AFGE BUEs. As a baseline, each office will be secure and furnished with desk, chairs, electronic and regular mailbox, telephones, smart phones, bulletin boards, meeting rooms, office equipment, office supplies, internet access, IT support and access to review laws, rules and regulations as the Agency maintains. All other provisions are matters for local negotiations.~~

Commented [CR88]: Agency:

The Union wants the Agency to tell the Union how often the Union is suing the Agency, and then suggest ways the Union can stop suing the Agency?

Commented [CR89R88]: Current agency proposal in DEIA:

Annually provide a copy of the MD-715 report and a briefing explaining the report. The briefing will include discussions on the status of each Reg on/Off ce on the state of EEO at the Regional/Off ce level as well as the Agency.

Formatted: Outline numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25 + Indent at: 0.5

Formatted: Font: Bold

Commented [CR90]: Agency:

Modified language in 1-11 discussions with the Union.

Commented [OPM91R90]: AFGE

The need for office space is not proportionate to the number of people in the office

B. If the Council Union President and Council Union Executive Vice President are not Remote or Teleworkers (more than 50%), the Agency will provide a workspace equivalent to the workspace provided for an Agency Branch Chief (or equivalent) and standard agency equipment at the President's and Vice President's respective Official Agency Worksite(s).

Commented [CR92]: Agency:

We have an agreement on this

Commented [BJ93]: Agency: who are you referring to?

Formatted: List Paragraph, Right: 0 , No bullets or numbering

Section XIII. Union Officials and Telework/Remote Work

A. 100% Official Time Union Representatives

1. With the exception of those prohibited from teleworking under 5 U.S.C. Section 6502(a)(2), those who have not completed telework training as required under Section 6503 and/or where there are issues raised by the safety checklist, AFGE-represented employees, certified by the parties as a Union representatives, authorized for 100% official time, are considered eligible by the Parties for either a Remote Work or a Telework arrangement without subjection to an analysis of their position of record (POR) with the Agency.
2. For the duration of their incumbency in the 100% Union representative position, they may perform representational duties, while on official time, consistent with law and regulation from remote or alternate work locations, under either a signed Remote Work or Telework Agreement.
3. Once no longer in a 100% official time union representative status, the Remote Work or Telework Agreement is cancelled and any Remote Work or Telework must be reapplied for under the negotiated article unless a Remote Work or Telework agreement was in place for the employee's position of record prior to 100% official time. In those cases, the employee's previous agreement will generally be reinstated unless, per the parties' agreement, relevant changes have occurred. Further, for an employee returning to their position of record after being on 100% official time, if other employees in their work group were asked to recertify their agreements while the employee was on 100% official time then, upon an employee's return to their work group former 100% official time officials may be asked to recertify their agreements at the discretion of their supervisors.

B. Less Than 100% Union Representatives

1. AFGE bargaining unit employees who serve as Union representatives on other than a 100% basis may apply for Remote Work or Telework under the negotiated articles and their eligibility will be based on their Agency position of record.
2. For the duration of their incumbency in the union representative position, employees may perform representational duties, consistent with law and regulation while on official time, from remote or alternate work locations under either a signed Remote Work or Telework Agreement.

C. General

1. All Union representatives desiring Remote Work or Telework arrangements are required to submit to their supervisor as provided in the Remote Work or Telework Articles a completed application for Remote or Telework, which must include: a completed Remote Work or Telework Application/Agreement; a completed Employee Self-Certification Safety Checklist for the remote work/telework location; an attached copy Employee's Approved Schedule; and a copy of evidence of Remote Work/Telework Training taken by the employee.
2. Unless herein stated otherwise, the rules and regulations governing Remote Work and Telework and contained in the Parties' Telework and Remote Work Articles continue to apply to all Union representatives performing representational duties from Remote or Alternate Work Locations. This includes, for example, changes in AWL or RWL
3. Commuting Expenses to Official Agency Worksite:
 - a. For a Union representative who has become a remote worker or a teleworker when traveling to their assigned official agency worksite for union representational responsibilities, the Agency will pay/reimburse employees for transit benefits for that employee to the extent transit benefits are available for similarly situated employees.
 - b. For a Union representative who has become a remote worker or teleworker and normally does not use transit benefits and whose RWL or AWL is outside the local commuting area, travel to their assigned official agency worksite solely for Union representational responsibilities will not be paid/reimbursed by the Agency unless the Agency initiates the request.

c. For a Union representative who has become a remote worker or teleworker who travels to the Official Agency Worksite at the Agency's request will be reimbursed the cost of travel available for similarly situated employees.

d. For an Agency employee recalled due to Agency needs arising from the employee's position of record, nothing in this agreement supersedes the parties' Telework or Remote Work agreements and any Agency obligation to pay for/reimburse employee travel.

4. If management determines a Remote Work union official who relinquishes their elected/appointed union position is ineligible for remote work, the agency is not obligated to pay relocation costs.

AFGE Council 238 Executive Board officials who are remote workers are not entitled to office space at official agency worksites. AFGE Council 238 Executive Board officials should follow standard procedures to obtain conference room space when they choose to come into the building.

~~B.C.~~ The national level and local Union representatives may use Agency-controlled facilities, equipment and resources for recruiting and membership drives.

Section XIII. Savings Clause

Nothing in this Agreement waives employee rights under 5 U.S.C. 7102 of the Statute or the Union's rights under Title 5 Chapter 71 of the U.S. Code.

Commented [CR94]: Agency:

Internal union business

Commented [OPM95R94]: AFGE

White House Task Force on Worker Organizing and Empowerment - Report to the President - February 2022

"The federal government will also provide greater access and information to unions seeking to represent and BUILD MEMBERSHIP among the federal workforce. Examples include

[one of the examples] Four agencies, including the GSA and DOI - will eliminate barriers to union organizers being able to talk with employees on federal property about the benefits of organizing a union.

[another example] - OPM will launch a set of strategies that will remove unnecessary barriers in federal workplaces that impeded unions' ability to organize federal workers and INCREASE THEIR MEMBERSHIP."